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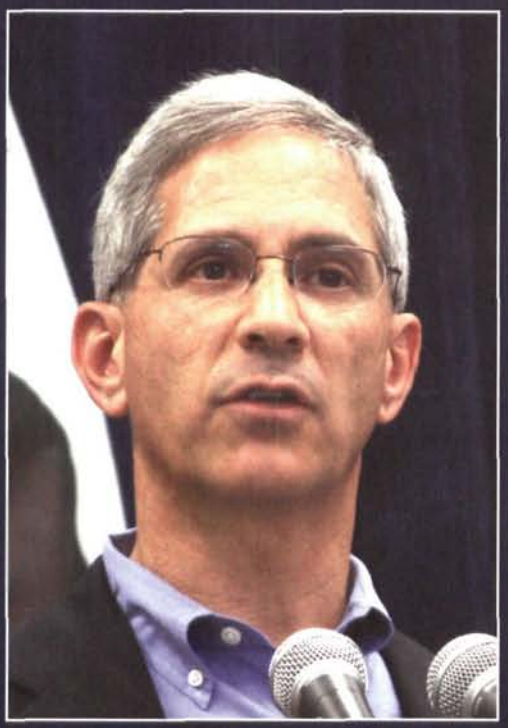

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CORRESPONDENCE

Leadership

Your symposium on "Leadership," (*CPR,* May/June 2009) chose an appropriate symbolic figure in Ronald Reagan standing before a backdrop of American flags. Who — to repeat the perennial question — will take over his leadership role? We probably can't induce Sarah Palin to run for California governor, but we must somehow locate and follow our best leader among those generous enough to offer themselves in the Lion's Den of our democratic politics. Here, at the moment, that would seem to mean either Meg Whitman or Steve Poizner, the two leading GOP candidates to replace the not-a-bit-too-soon departing Arnold Schwarzenegger. Please give us more about these two individuals, their politics, their supporting teams, positions, leadership styles — everything a sensible voter will need to make as wise as possible a choice between them. Which of them we GOP voters pick will likely be the single most important factor in determining whether California can finally be recalled from the brink of socialist, anti-family, anti-religious extremist mania — which is a long way of saying Jerry Brown, a true loony, even by California standards.

Ferdinand Lopez
Walnut Creek

See this issue's cover articles: first installments in a series of intense and (we trust) informative spotlights focused on the very candidates the reader mentions.

— editor

The things that are God's

John Henry Newman (in "The things that are God's," *CPR,* May/June 2009) worried, with regard to proposals to end direct state financial subsidies to the Church of England, that "the chief and obvious objection to the clergy being thrown on the People [to provide them material support], lies in the probable lowering of Christian views, and the adulation of the vulgar, which would be its consequence." Although his words conjure images of *My Fair Lady's* Eliza Doolittle and her ghastly, amoral, conniving father, I think this is an unfair light in which to cast those the English used to call "commoners" (as in "House of Commons"). As Newman's essay shows, the common people seem least susceptible to corruption by the World. Or, putting it the other way, those "raised" above the "common" are often first to fall into silly self-importance and the most unfathomably shallow obsessions with worldly honors and tokens of esteem.

Who competes with our "elites" in handing one another plaques, awards, Hall of Fame and Ring of Honor memberships? — all designed to reflect the world's heartiest approval of their refusal to compromise with its own spirit of relativism in all matters of morals, honesty, and good sense? Who comes near their exploits in caving in, selling out, and running away under fire? You want to see a "lowering of Christian views" and "the adulation of the vulgar"? Interview more or less any "elite" journalist, political figure, or leading citizen in labor, business, or public education. You will find that integrity is the one thing they universally loathe; it's what they can't stand about Sarah Palin and hated about Ronald Reagan, a woman and a man who are never and were never for sale. The world fears and lashes out at what it cannot buy off.

I am no power-to-the-people liberal, but it is usually the ordinary folk, as a group if not always as individuals, who (admittedly because they usually have little choice) remain connected to real life — they're too little protected against the consequences to risk self-destructive behavior. They are usually the ones who save good institutions and polities (when they are saved). When the ordinary people go bad, beginning to resemble the elites, look for the collapse at the door.

John Phillips
Fresno

CPR

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SACRAMENTO SPECTATOR

Though the observer making the comment looked nothing like Alice, his comment about the just-adjourned legislative session directly quoted the little miss, not to mention being spot-on accurate about current goings on in Sacramento: "It just gets curiouser and curiouser."

Arnold Schwarzenegger, version 12.5, continues to be a Janus-faced contradiction. When the good side of the face is shining it can be quite good — he actually worked with Republican legislators to pass measures beneficial to California and to defeat harmful ones — a first in about four years. He announced he will veto Luddite legislation requiring California to obtain an impossibly high 33 percent of its energy from renewable sources by 2020. On the water-front (not the movie; the kind we drink and grow stuff with) he remains supportive of above-ground dams.

However when the ugly side shows, it can be ugly indeed. He will veto the above mentioned "renewable energy" bill because of a provision stating all that new energy must come from California. That's nice, but he still supports the over-all concept, which not only is not-nice but stupid and, in the long run, economically disastrous for the state. Mandating 33 percent renewable energy (whether from inside or outside the state) represents an increase in currently available renewable energy by a factor of seven.

It cannot be done, period, at any price (and any price this Quixotic scheme's costs must be borne by the people: spending others peoples' money to make themselves feel good — liberalism defined). But Arnold, still in thrall of

the loony environmentalists (see AB 32), doesn't understand or doesn't care that average Californians' energy bills will likely quadruple or more if these nonsensical mandates are put in place. He even went so far as to urge the Legislature to return to pass another version of the bill without the "inside California" requirement. When the governor is wrong, he is very, very wrong.

As you might imagine, the open-mike escapades of "Spanky and our gang" in the Assembly GOP has provided much comic relief, and this sentence represents my one and only attempt to add to the stock-pile. The liberals have jumped on the hypocrisy angle of, once again, a "family values" Republican caught acting, well, like a hypocritical liberal, taking up positions in public only to betray them in private. This time, the liberals are correct. The hypocrisy reeks.

Mike Duvall was by all accounts a fine man and good conservative vote in the assembly. Sadly, however, it turns out he was also a hypocrite, at least to the extent that he espoused a "family values" political agenda, which, I understand, was a considerable part of the time. We were rightly outraged by the tax-raising budget shenanigans of GOP lawmakers Cogdill, Maldonado, Villines, and Adams. Mike Duvall's transgression differed in particulars but was of the same nature as that of Cogdill, *et. al.* Hypocrisy corrodes politics. Republicans should not put up with it in any form.

As this is written (September 13), a fair chance exists for a special "unfinished business" Legislative session No good can come of this. The governor should let the corpse of the '09 session rest in peace (which is the one way California taxpayers can know any peace themselves). On the bright side, a Special Session would require more *Spectating* of me, at River City's toney salons, watering holes, and soirees. Put me in coach — I'm ready.

— *A.P.C.*

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A Closer Look

How about *real* health care reform?

Start by terminating a system in which the person purchasing services is not the one consuming them.

MIKE FREDENBURG

PREDICTABLY, THE heated debate over the future direction of U.S. health care has had a polarizing effect, with the left accusing profit-driven health care providers and doctors as being callous and unresponsive. Conservatives for their part have taken the stance that we have the greatest health care system in the world and that while some reforms are needed, destroying it would be a tragedy.

Make no mistake: what Obama and his allies are proposing would destroy the health care system we know. But conservatives would be well-served not to gloss over the reasons so much support exists from a wide range of citizens for major reforms. Contrary to what many current debate participants are calling a triumph of free markets, HMOs actually are a product of government mandates and tax incentives carried to their logical extreme. Perhaps this is why so-called private managed care has more similarities with the kind of government-managed care proposed by Obama than we might expect.

Case in point: for many years, my youngest brother Matt has been living with excruciating back pain, the kind of pain that can make you wish you were dead. As a programmer working for a large Silicon Valley firm he has health-care coverage. This benefit gave him the privilege of having to fight with HMO bureaucrats every step of the way, while grudgingly being shuffled from doctor to doctor and ultimately being told the pain is something that he is just going to have to live with.

Fortunately, his employer allowed him to telecommute as long as he got the work done. At his home he has set up his computer on a five-foot-high stand so he

---

Michael S. Fredenburg is a conservative writier and political activist living in the San Diego area.

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can stand up while he works. He can't sit for any length of time without severe consequences. If he drives more than a few minutes he knows he will pay a price for days. Consequently, he had been reduced to an existence of hanging around the house, doing what work he could and falling asleep at 4 a.m. when exhaustion finally overwhelms the pain.

FINALLY, AFTER a lengthy HMO-imposed waiting period its length not at all influenced by the pain he was experiencing, he was able to switch to a health-care network that allowed him to see a well-known back specialist. Matt brought the MRIs taken by his previous health care network doctors to his first visit with the specialist — MRIs the previous doctors said showed that nothing discernibly wrong with his back. The specialist took one look at the MRIs and identified one dead disk and one dying disk, both appearing clearly on the MRIs. After a couple of visits with the new doctor, Matt said that for the first time in two years he felt he was actually under a doctor's care.

The damage to his back is irreparable. He will be limited in what he can do for the rest of his life. We will never know if earlier detection of the damaged and dying disks might have given him some better options. To a lesser or greater extent, this type of experience with HMOs and managed care is one that has been echoed by many of my personal friends and acquaintances. Internet stories and blogs are legion lamenting HMO callousness and indifference. Accordingly, no one ignoring the reality of the current system's problems is doing the county any favors.

However, blaming a profit-driven market for them is wrong because the current system is not operating as a free market. Unlike a real free market, most people's health care is provided through a system in which the person purchasing goods and services is not the one consuming them. The relationship between supply and demand is regulated by health-care gatekeepers who decide the timing and quantity of resource allocations little influenced by the services' consumers. These consumers, the employees, are given little choice unless they are wealthy enough to pay out of pocket for what they thought they would receive in return for their hefty insurance premiums. Financial incentives are geared to ensuring *corporate* profits. Our perverse national tax structure results in the person technically paying the HMO being the employer, not the employee who is locked into a particular health-care plan under severely

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attenuated market forces. In a sense, HMOs have a monopoly on that employee's health care dollar. So consequently they often act more like a government single-payer system than a real business concerned about keeping its clients happy.

Beyond a tax code that discourages choice and competition among health insurance providers, the federal government has implemented a massive scheme of cost shifting that further negatively impacts private sector health care. Consequently, HMOs like Blue Cross and Kaiser are forced to become agents of the state as they pass on their costs to their clients in the form higher insurance premiums. A study released in December of 2008 conducted by the actuarial consulting firm Milliman Inc. and endorsed by U.S. Chamber of Commerce found that "Employers and private health insurers pay a "hidden tax" of $88.8 billion each year because government programs fail to pay enough to doctors and hospitals, an industry-sponsored study found. Assuming no change in total revenue to health providers, eliminating the cost shift would reduce medical expenses for privately insured patients by 15 percent. Cost shifting adds $1,512 to the amount spent to cover a family of four, including the employee's $397 payroll contribution."

Of course these substantial increases in premiums increase the number of working people who cannot afford to buy health insurance. In many cases these same workers also do not qualify for Medicare. Cynically, Obama and other big government advocates cite these uninsured working folks as a reason we need more government control of health care.

THE LAWYER CONNECTION

Medical tort lawsuits are another big driver of spiraling health care costs. The $30 billion in direct costs associated with medical tort lawsuits in 2007 may seem small relative to the $2.3 trillion Americans spent on

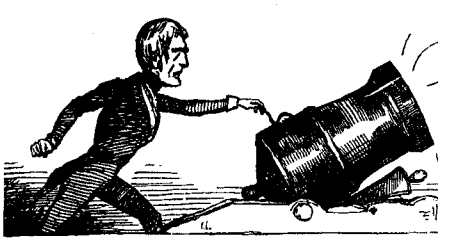
WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By SAM PAREDES

California lawmakers are considering three business-harassment-at-its-worst bills that would increase sporting goods stores' cost of doing business here enormously. Evidently oblivious to the state's economic crisis, the Legislature proceeds simply by ignoring small business realities. Instead of handling serious budget issues, in Sacramento, it's business as usual: a fiscal 'shell game' employed to cover the sheer irresponsibility of passing such destructive bills.

We're talking, of course, about pointless bills borne of the left's obsessive hatred of people fending for themselves, in this case by owning and using firearms. They want ammo registration (AB 962), increased bureaucratic entanglement for gun buyers (SB 41), and and the costly (to state coffers) gun show ban at San Francisco's Cow Palace (SB 585). These little numbers, it is estimated, will cost California at least $2.92 million annually in lost sales taxes, $629,000 in increased operating costs for state agencies, and $180,000 in lost Cow Palace revenue. Further, it's estimated they will eliminate $35.7 million in vanished retail sales in California.

Not that the culprits behind these we-hate-normal-people laws aren't well aware they are wasting money. Here's where the shell game begins. Each of these anti-gun programs carries hefty set-up costs.



They get itby dipping into the Dealer Record of Sales (DROS) Fund as though it were some sort of a slush fund for any and all new programs.

Gun owners know, and are furious, that the state Department of Justice has accumulated a $10.5 million surplus of gun buyers' money funds in the DROS Account through background check overcharges. The Penal Code specifically limits the Department to charging a fee no higher than the cost of providing the background check service. That doesn't matter at Jerry Brown's mad-cap Department of Justice. The extra cash just means new programs can be covered.

These bills will leave many retailers no choice but to move, say, to Nevada, where operating productive, job-producing businesses isn't greeted like an invasion of Mongol hordes. All of this, good friends, the left calls "public service." CPR

Sam Paredes is executive director of Gun Owners of California.

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health care in 2007, but that's only part of the picture. In response to the threat of these medical malpractice lawsuits, physicians order repetitive, expensive procedures against the possibility they may someday be called upon to justify their standard of care in a legal proceeding. According to University of Pennsylvania Law Professor and Health Sciences expert Tom Baker, unnecessary defensive medicine accounts for roughly 9 percent of all health care sending. This, along with the costs of lawsuits themselves, adds a $230 billion dollar charge attributable to medical malpractice lawsuits.

Lawsuits have their place, but the current system provides massive rewards for filing frivolous lawsuits and lawsuits with little merit, and no penalties for doing so. Simply balancing these forces by enacting some kind of loser pays provision would radically reduce the number of lawsuits filed and, consequently, help reduce health care costs. That reform would be more socially responsible and would have more positive impact than simply applying arbitrary caps on malpractice award amounts, which is the current practice. Of course, Obama and his allies vehemently oppose such a reform.

IT'S THE GOVERNMENT, AS USUAL

The American health care system is severely burdened and distorted by government mandates that severely curtail the market's ability to innovate. Yet despite these government-imposed handicaps, ours is still arguably the world's best health care. The current system, however, is not sustainable if costs continue to spiral out of control.

A real program of common sense market reforms should be implemented. It would unleash the creative talents of free people doing their best to deliver the best health care possible in a world of limited resources. Failure to act decisively and courageously will lead to further crippling socialization of our health care. And that means further degradation in the value of what it means to be human. CPR

The Law

The NFL's 'Rooney Rule' is a no-go for the states

Oregon risks penalty flag by using race in hiring coaches

JOSHUA THOMPSON

A HARMFUL LESSON has just been added to the higher-education curriculum in Oregon. Last July, Governor Ted Kulongoski signed legislation requiring state public universities and colleges to interview at least one minority candidate when hiring an athletic director or head coach. According to media reports, this is the first such law in the nation. Equal opportunity is an important goal — one obviously not served by the Orwellian expedient of adopting race-based hiring formulas. On the contrary, Oregon's universities will now "teach" that individuals should be defined by color and evaluated on that basis rather that according to the content of their character, achievements, abilities, and potential.

The state modeled its new law on the National Football League's so-called "Rooney Rule," which requires teams to interview at least one minority candidate as a possible replacement whenever a head coaching job is vacant. The Rooney Rule's effectiveness is debatable. Although the number of minority head coaches has risen since it was adopted six years ago, no team has cred-

Pacific Legal Foundation staff attorney Joshua Thompson is a leading litigator against government programs that discriminate or grant preferences based on race. PLF is a legal watchdog organization for limited government and equal rights, (www.pacificlegal.org).

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ited the rule for this change. In fact, Pittsburgh Steelers Chairman Dan Rooney, the rule's namesake, has said it played no role in his hiring of Mike Tomlin, a black American, as the Steelers' head coach in 2007. What else could he say and not undermine Tomlin's authority, not to mention his self-respect?

In any case, there are some important reasons why Oregon should not – and can not, legally – follow the NFL play book on the Rooney Rule. First, simple fairness says government should not treat some people better or worse than others because of skin color or ethnicity. In Oregon, non-minority candidates who are *not* interviewed will say the playing field wasn't level. At least one interview will be offered on the basis of race, and for that interview, they weren't eligible.

At the same time, a minority applicant who wins a coaching job will pay an unfair price: a tainting of his or her achievements, robbed of the respect they deserve by anyone who understandably sees the hiring process as keying on skin color and not quality or ability.

The legal argument against Oregon rests on the U.S. Constitution. As with all states and localities, Oregon is subject to the the Fourteenth Amendment's Equal Protection Clause: "No state shall deny to any person within its jurisdiction the equal protection of the laws." The Fourteenth Amendment was passed three years after the Civil War, and prohibits government from classifying and treating people differently by race. That's why the Topeka, Kansas, school board was prohibited from separating students into white and black schools; Richmond, Virginia, was barred from awarding contracts on the basis of skin color; and Seattle's public schools were ordered to stop assigning students to schools based on their skin color, to achieve "racial balance."

Courts allow government to use race to guide hiring and other policies only when a "compelling governmental interest" is involved, and where there are no better – no "less restrictive" – alternatives available to promote it. It's highly doubtful that this strict test will permit Oregon's scheme to color-code coaching applicants. For one thing, Oregon has identified no intentional discrimination by its universities to justify such a race-focused hiring scheme remedy. Anyway, if Oregon athletic programs had been discriminating, a much stronger response would be called for — starting with firing any officials who made personnel decisions based on bigotry.

STRATEGIES ABOUND to broaden minority opportunities that don't put the state in the business of racial discrimination or racial preferences. Schools could be required to hold coaching vacancies open longer, for instance, or do more advertising when positions open up. Instead, Oregon has chosen a policy that continues the very evil the Fourteenth Amendment was designed to eliminate. Don't be surprised if a lawsuit results — and a court rules the state out-of-bounds. CPR

Those in power over us

Visiting Utah

It begins to seem there is simply no escape from the long and probing hands of the state.

TED ARCHER

IN AN attempt to escape talk of bailouts, stimulus packages, state bankruptcies, and the wholesale nationalization of our country's largest industries, I recently took a three-day jaunt to Utah. What better way to forget government's excesses than to visit a land of gun-toting folks while becoming a Godparent for the first time? It was to be a weekend of freedom — a celebration of family and religiosity, with no mind paid to government intervention.

However, sadly, though predictably, every-

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where we went and everything we did was first scrutinized, and then taxed, by Big Brother. After paying $80 in federal taxes for our airline tickets and subjecting ourselves to Uncle Sam's rubber Transportation Security Administration (TSA) glove, we set forth on a Delta flight. The flight attendants were nice enough — so nice it wasn't until later that I remembered the federally-mandated safety speech that they gave us or that I was awakened toward landing so I could comply with the law by tilting my seat forward. Upon landing, we dutifully followed the government's signage and made our way to the Enterprise rent-a-car counter. Because my mother-in-law works for the company, we received a three-day rental for the outstanding price of $49.06. Unfortunately, that price didn't include any of the local, airport, state, or federal taxes layered on top; I wouldn't have noticed had I not asked the customer service representative to explain the $105 price on my charge slip. Less than half of the money I was paying would go to the company actually providing me the service.

PUT ANOTHER WAY: more than half the cost of the rental car would go to various governments that produced nothing, offered me nothing in the transaction, and profited only because they could threaten a supposedly private business.

By the time we reached our hotel (my wife of course obeyed all state and federal signage on both the highways and local streets), I had nearly calmed down. I even felt good enough to joke with the nice man behind the Hampton Inn counter, "only 13 percent tax? That's cheap — compared to the 115 percent I paid Enterprise." Then I looked to my right and saw a notice: "Dear Customer: Due to changes in federal Law, our hot tub is temporarily closed. Thank you for your understanding." When I queried the cashier, he informed me that someone at some federal agency decided that drains in hotel spas needed to be at least 30 inches apart — a six-inch increase over the previous law. Accord-

Ted Archer is a hard-working American employed, like most of us, by a small business. A marketing and operations consultant professionally, Ted is most concerned about his new wife, their new home, and starting a family together.

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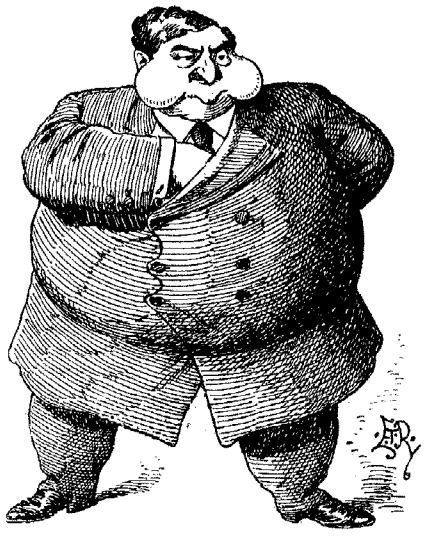
William E. Saracino
Executive Director



The Spirit of Liberal Government

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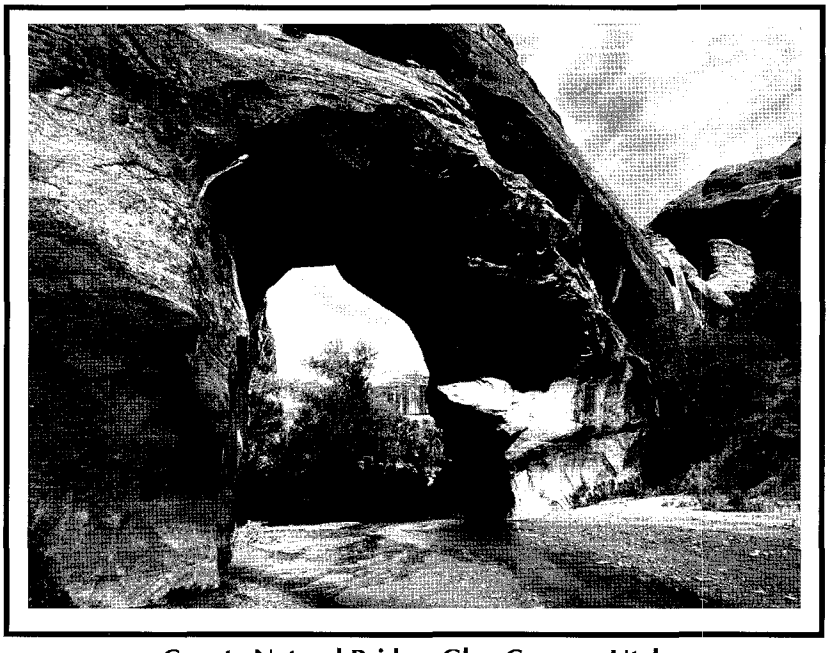
ingly, the hotel had spent $8,000 in trying to prevent two drains from getting too close to one another.

All this regulation in one morning alone — and I had not yet tried to sample or purchase beer in a local Utah brewery. My friends (and even my wife) said, "Who cares?" Who cares if I pay $80 in taxes on top of an airline ticket or $57 to the government for a car? What's another $26 on top of my hotel bill? Why worry about the government's attempts to make us safer? I am routinely implored to focus on the big things, those things that really matter.

And, truth be told, that is a problem. I should focus on the big things. But put another way, I shouldn't have to worry about the small things. I shouldn't be hindered at every turn by government intervention. I don't need warning labels on the drinks I buy. I don't need my food supply controlled by government inspections. I don't want to be told not to tear the tag off a mattress. I have been told by folks who do not, apparently notice the oxymoron, that these taxes, regulations, rules, and requirements are "the price you pay to live in a free society." Of course, if anything, these taxes, regulations, rules, and requirements prove that we do not live in a free society. We have maintained the outer appearance of freedom — the eagle, July fireworks — but only those ignited by state-approved "experts," the Anthem at ballgames. But our president, congress, and the major media continually tell us that our freedom will be enhanced once government controls or regulates the auto industry, the airline industry, health care, political speech, commerce, retirement, and more.

We Americans have not only stood by but welcomed further such encroachment. Instead of insisting that we be allowed to pursue our own definition of happiness, we have begun competing to impose a uniform way of life on all. In a land whose forefathers once died for independence, we now aim to out-whine our neighbors so that our elected officials will give us their money, which is, of course, our own money. But what is so frightening about freedom and independence? If I promise not to use the government to steal from you, will you do the same? If I promise not to legislate your lifestyle, will you reciprocate in turn? If I promise not to lobby to impose my way of living on you, will you agree to pursue your dreams independently? If I agree that I don't know what's best for you, would you agree to let me decide what's best for me? All that takes a certain level of trust among people. If anything is the price of freedom, it is that. But it's still nothing compared to the mental contortions that trusting government requires. Do you not agree? CPR



Coyote Natural Bridge, Glen Canyon, Utah

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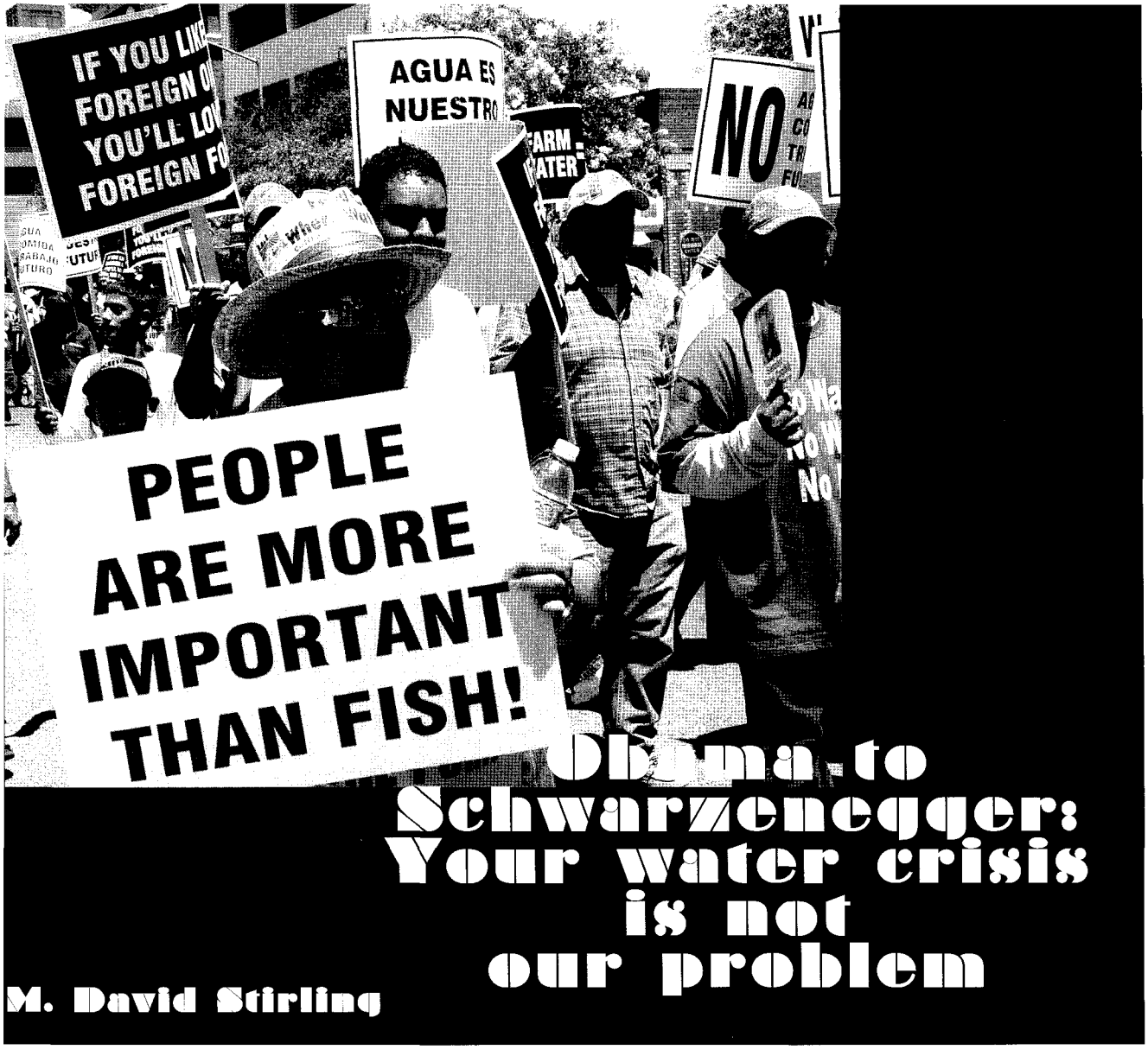

Obama to Schwarzenegger: Your water crisis is not our problem

M. David Stirling

That headline generally summarizes the Obama Administration's response to Governor Arnold Schwarzenegger's plea for federal help in relieving the "catastrophic impacts" of California's water crisis. Confronted with two-thirds of Californians south of the Sacramento-San Joaquin River Delta experiencing — or soon to be experiencing — mandatory water rationing, Central Valley farmers losing an estimated $710 million in revenues, the loss of 35,000 agricultural jobs, and Valley communities with unemployment rates as high as 40 percent, the governor's letter to the Obama administration was sincere and justified. After all, the statute at the heart of California's water crisis, the Endangered Species Act, is a federal law.

The governor did his cause no favor, however, when he declined advice offered by the Pacific Legal Foundation, a legal organization with vast court experience in challenging the federal Endangered Species Act (ESA). PLF attorneys recognized earlier that a decision by the U.S. Fish and Wildlife Service (FWS) — known as a Biological Opinion (or BO for short) — shutting off Delta water deliveries through the feder-

M. David Stirling is Of Counsel with Pacific Legal Foundation (pacificlegal.org), a public interest legal organization that advocates in the courts for private property rights and a balanced approach to environmental regulations. He is the author of the book, Green Gone Wild - Elevating Nature Above Human Rights (see: www.greengonewildbook.com), which provides the basis for the ESA background information included in this article.

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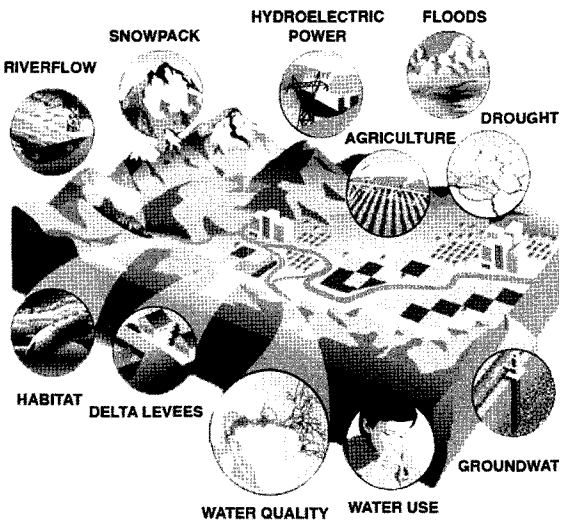

al and state pumps to the Bay Area, the Central Valley, and Southern California to preserve the ESA-listed Delta smelt would cause increasing economic, social, and personal hardship for millions of Californians. Although PLF was in federal court on behalf of several small Central Valley farmers challenging the Delta smelt BO, any relief that litigation might bring would be months — perhaps years — away.

The harsh "species-first/people-last" provisions of the ESA allow only a narrow avenue for seeking relief from a BO's severe impact on people. In emergency situations, when relief from major species-caused hardship requires a timely response from the federal government, a formal request can be made to the secretary of interior (or to the president as his boss) to convene the Endangered Species Committee — a high-level federal panel nicknamed the "God Squad." This so-called "God Squad" has authority to find that the BO's impact on people outweighs its benefit to the species, and to overrule or modify the BO. A state's governor is the primary official with authority to request that the "God Squad" be convened.

Beginning in late June, PLF commenced an urgent "Save Our Water" petition drive, calling on Governor Schwarzenegger to request President Obama and Secretary of Interior Salazar to convene the "God Squad" to deal with California's water crisis brought on by the ESA. The petition drive concluded August 19 with 12,750 signatures. PLF submitted the petitions to the governor with a letter advising that the "God Squad" provision was added to the ESA by Congress specifically to address emergency situations like the state's water crisis, and it was the only formal route available for trying to obtain relief from severe environmental restrictions imposed by ESA.

September 2 — the deadline for requesting, formally, the president or interior secretary to convene the "God Squad," passed without the governor making the request. PLF President Rob Rivett called Mr. Schwarzenegger's failure to make the request disappointing "because that panel has the authority to overrule radical environmental regulations that starve farms, businesses, and families of water." By not requesting the "God Squad," the governor passed up the opportunity to bring high visibility pressure to bear on the Obama administration on an issue of vital concern to 38 million Californians. Had the White House then refused to call a "God Squad" session, the California water crisis would have put the president in a difficult political position. Instead, the governor chose a softer approach.

On September 1, one day before the "God Squad" request deadline, the governor sent his own letter to Interior Secretary Salazar and Commerce Secretary Gary Locke. Mr. Schwarzenegger's letter is a reasonable, if gentle, plea for help — that lacked the authority, visibility, and leverage a formal "God Squad" request would have carried. It stated in part:

> The recent biological opinion ... issued by the U.S. Fish and Wildlife Service ... to protect threatened fish species in the Delta ... provide little or no fisheries benefit but do come at a high cost to the economy ...
>
> On May 7 of this year, my director of Water Resources, Lester Snow, wrote to the USFWS requesting re-consultation [meaning re-consideration of the BO] on Delta smelt and the operation of the state and federal water projects .... Th[is] letter ... remain[s] unanswered ... We

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have entered an endless cycle of consultation that is guaranteed to reduce water supplies and water supply reliability, but is not guaranteed to recover or even reduce damage to endangered species. This cyclic regulatory process is not working for people, and it has not worked for fish ....

Secretaries Salazar and Locke responded September 3, saying California's water crisis was not due to the pumping restrictions imposed to protect Delta smelt, but was the result of California's three years of drought. "Given these facts, we are disappointed that your letter would attempt to lay the California water crisis at the feet of [federal] agency scientists." It went on to express their hope "that the current efforts that you and the state Legislature are making to pass legislation to chart a sustainable water future for California will be successful." In other words, it's your problem, governor; fix it yourself.

IGNORING COMPLEXITY

Water in California — and, because of the state's geography, water distribution — is one of the most complicated and politically divisive issues ever to confront federal and state officials and the people of California. When the ESA's harsh provisions and the federal government's overbearing approach to enforcing it are added to the mix, it becomes a nightmare. For those unfamiliar with the Endangered Species Act, a brief background might be helpful.

Congress enacted the ESA to provide greater protection, recovery, and preservation for struggling plant and wildlife species. It received neither significant opposition from potentially affected interest groups, nor debate in either house of Congress. It passed the Senate 92-0, and the House 390-12 (32 members did not vote.) No Member spoke against the bill in either house prior to the vote. To the question of how one of the most controversial laws of our time could have passed overwhelmingly without opposition or congressional debate, ESA researcher and author, Shannon Peterson, offers this explanation: "Few at the time opposed the ESA because no one anticipated how it might interfere significantly with economic development or personal property interests ... they failed to see how it might affect them." ("Acting for Endangered Species - The Statutory Ark," 2002, University of Kansas Press.)

However, once it became law and began to be enforced by federal agencies and environmentalist organizations (yes, the ESA specifically allows these organizations to sue in court to enforce the act, and then rewards them with lucrative awards of attorney fees, compliments of American taxpayers), the ESA became one of the most onerous, expensive, and least effective federal laws in the nation's history. For example, ESA enforcement has led to the loss of many human lives, as a result of Hurricane Katrina and the flooding of New Orleans in 2005 (ESA invoked as protection for shell fish and other aquatic life); of the Feather River levee break near Arboga, California, in 1997 (to protect the North Valley longhorn elderberry beetle); and the 2001 Thirty Mile Fire in Okanogan National Forest in Washington state (protecting Chinook salmon, steelhead, and bull trout).

It has caused the loss of thousands of livelihoods and businesses, as with farmers in the Klamath River Basin in 2001 (protecting sucker fish and salmon); the timber industry and nearly 30,000 loggers in forests of the Pacific Northwest beginning in 1994 and continuing (protecting the Northern spotted owl); and the Pacific Coast salmon fishing industry beginning in 2004 and continuing (protecting hatchery-spawned salmon.)

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In addition, ESA has caused people to lose the use of their land, as did residents of Perdido Key, Florida, whose homes were destroyed by Hurricane Ivan in 2004 (ESA invoked to protect the Perdido Key beach mouse); homeowners in Riverside, California, whose homes were burned by the California Fire in 1993 (to protect Stephens' kangaroo rat); and property owners in Alameda County, California, denied all use of their land between 1999 and 2005 (to protect the Alameda whipsnake).

Since 1973, federal agencies have spent many billions of taxpayer dollars to implement and enforce the ESA. In addition, property owners have lost billions when their proposed land uses were denied by the federal government because of the presence of a threatened or endangered plant or wildlife species on or near their property. The sad reality is that of the more than 1,355 species listed under the ESA for preservation and recovery during the past 36 years, only five — less than one percent — have been recovered due to the ESA. The overall percentages for listed species preserved aren't much better. In a 2004 report to Congress, the FWS revealed that the status of 42 percent of listed species was "uncertain," of 22 percent "declining," of 27 percent "stable," and of only six percent were listed as having achieved a status of "improving."

The Delta smelt, a fish about the size of an adult human's little finger, is among the 22 percent that continue to decline. Despite years of work and funds expended by federal and state wildlife agencies to determine the causes of, and reverse the Delta smelt's decline, no success has been achieved. Between 1973 and 1993, when the smelt was listed as "threatened" under the ESA, the tiny fish's population dropped tenfold. Today, the Delta smelt's numbers remain precariously low. In an earlier Biological Opinion, the FWS found several contributing factors in the fish's long decline, including diminished Delta water quality, predator fish, numerous invasive species eating the smelt's food source, and the federal and state pumps near Tracy that propel Delta water south. But FWS also found that the pumps, while taking some smelt, were not killing so many as to cause the smelt's extinction. The Natural Resources Defense Council and other environmental organizations, wanting the pumps shut down permanently, challenged this BO in federal court, charging that the pumps were alone causing the smelt's decline.

Although the judge recognized that numerous factors were likely responsible for the species' decline, he felt compelled by the ESA to order the pumps shut off whenever young smelt were in the vicinity. This ESA-driven ruling reduced Delta water exports through the pumps by 30 percent during 2008, and caused a $300 million hit to the state's economy. According the California Water Agencies, it was "the most drastic cut ever to California water." Not long thereafter, the FWS issued a new BO, this time finding that the pumps were the primary factor in the Delta smelt's decline. This is the BO Governor Schwarzenegger's letter referred to, and that PLF and many other parties are now challenging in federal court.

This year, so much media attention has been focused on "the drought" that the ESA's heavy, ongoing impact has been obscured. While it is undeniable that the state is in the third year of drought conditions, according to the Wall Street Journal, "tens of billions of gallons of water from mountains east and north of Sacramento have been channeled away from farmers and into the ocean, leaving hundreds of thousands of acres of arable land fallow and scorched." This water passed by the shut-down pumps and instead of being available for people's use, was, unfortunately, wasted into the ocean to "preserve" a species many believe will go extinct from many other causes no matter what steps may be taken to address the water crisis.

No sustainable solution to California's water problem will be found until it is recognized that a common sense, balanced approach to species preservation is much needed — an approach that also provides for the needs of people. That cannot be achieved so long as federal government officials place concern for species above the needs of people. CPR

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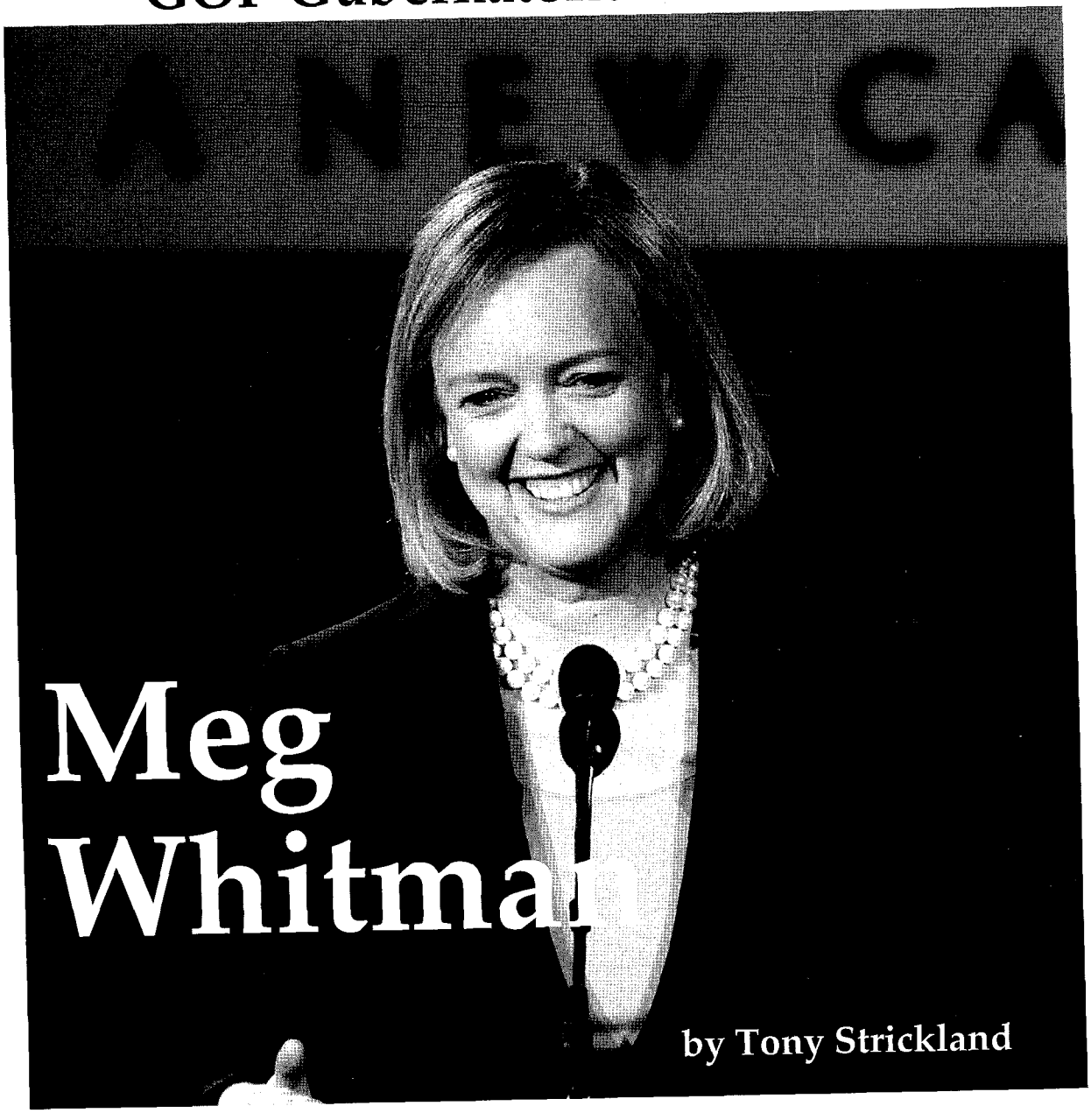
Who are California's

GOP Gubernatorial Candidates?



by Tony Strickland

California needs Meg Whitman. Let me tell you why. The 2010 election will be a watershed for our state. And Meg is the best candidate to lead California. No other candidate in the Republican race for governor knows more about spurring job creation; she's created thousands of jobs for Californians and led a company that provides a livelihood for millions. No other candidate in the race has run complex organizations; she's led eBay from a start-up to an $8 billion global powerhouse that revolutionized the online marketplace. No other candidate in the race has built such an impressive campaign; she's won major endorsements and has gained a large California grassroots following. Meg is in the best position to succeed in the general election and reinvigorate the Republican Party. In short, she can win, she can lead, and she can turn California around.

Meg has the commitment and determination necessary to make the changes this state so badly needs. She has an unblemished record of de-

Tony Strickland represents California's 19th state senate district and serves as assistant senate Republican leader.

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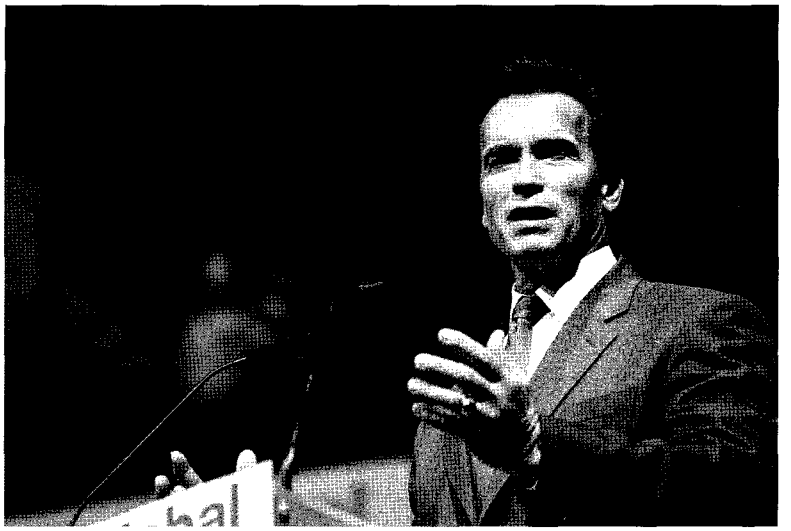
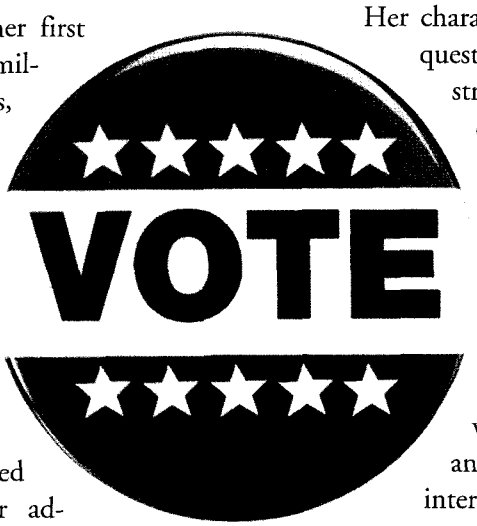


Governor Arnold Schwarzenegger

livering on her promises. As CEO of eBay for a decade, she was held accountable for producing results. And she delivered. During her tenure, eBay grew from 30 employees and $4.7 million in revenue to more than 15,000 employees, almost $8 billion in revenue, and a network of 12 million users in California alone. In this campaign, Meg is laying out a fiscally conservative road map that will renew our confidence in California and reenergize Republicans. She is carrying on the torch of Ronald Reagan's conservative philosophy of small, limited government. Meg has a focused plan to rebuild the state's competitiveness. She's committed to growing jobs, and has a plan for cutting taxes, ending wasteful spending and fixing California's public schools.

She is committed, in her first term, to creating two million private-sector jobs, cut regulations and red tape, and return control of our schools to parents and teachers. As she often says on the campaign trail, she refuses to stand by and let California fail. Meg didn't grow up wanting to be governor. She grew up intrigued by the business world, after admiring her father's success. She also grew up with an optimistic, can-do attitude instilled by her mother, a pioneering spirit from whom Meg gets much of her drive and inspiration. It's the combination of business acumen, visionary leadership and dynamic spirit that makes Meg my candidate. She's genuine to the core. Her intentions are real and her fiscally conservative goals for California are achievable.



Meg Whitman is one of the world's most respected business leaders. She is only one of seven women to be consistently ranked among the world's most influential people by *Time* magazine. She has earned a well-deserved reputation as a problem solver and effective manager, and is a proven job creator. At eBay, Meg created a vibrant environment that encourages individuals to pursue entrepreneurial dreams. Today, more than one million people make all or part of their livings selling on eBay, while countless more use the site to find and buy the products they need for their homes and businesses. She served as eBay's president and CEO from March 1998 to March 2008. Before eBay, Whitman distinguished herself in leadership positions with Procter & Gamble, Bain & Company, Disney, Stride Rite Corporation, FTD, and Hasbro.

During these difficult times, we need someone who knows how to make things happen. Her character and integrity are beyond question. She is a woman with strong conservative fiscal principles who has a stellar track record of delivering common-sense solutions. She does not change positions depending on her audience or political goals. She will lead with conviction, and not be swayed by polls. She will manage with authority, and not be sidetracked by special interests and second-guessers. She

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understands that governing is not a popularity contest but is based on a trust with voters to stick to her word and accomplish what she promises. Republicans are flocking to her message. In August, she traveled the state meeting hundreds of Californians from San Diego to Arcata. Wherever she went she was greeted enthusiastically.

I've been with her on the campaign trail and I haven't seen this kind of excitement in a long time. Time and time again, she received her biggest applause when she described how she would govern California with "a spine of steel." Californians are craving a leader who will stick to her principles. And that's why she is drawing strong support both from Republican grassroots organizers and prominent GOP leaders on the local, state, and national levels. She has been endorsed by former Governor Pete Wilson, Senator John McCain, and former Governor Mitt Romney, among many others.

We all know California cannot succeed without a strong, effective state Republican Party. Meg is reaching out to all Californians and I am certain she can bring many voters back to our Party. She's committed to helping Republicans get elected and stay in office. After I met Meg on the Mitt Romney campaign, she made a point of helping me. The weekend before my election to the state senate, we sat making get-out-the-vote calls. It made all the difference in my close election.

California needs determined leadership. As Meg likes to say, being governor — the CEO of this state — is the ultimate test of leadership and conviction. We need a governor with a clear vision for our state and our Party: a governor who can articulate a new path and get results. We need a governor with a spine of steel. And I have a personal reason for wanting Meg to succeed. My wife, Audra, and I want to see our two young children, Ruby, 3, and "Tiny Tony," 2, grow up with the same quality of life I knew growing up in California. I've watched my brother move his family to Jacksonville, FL, when his company relocated out of Santa Barbara because California taxes and regulations made it easy to move those high paying jobs. My hope is that this doesn't happen to other families across this state. I want my children not only to grow up in California; I want it to be a place where they want to stay. CPR

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Who are California's

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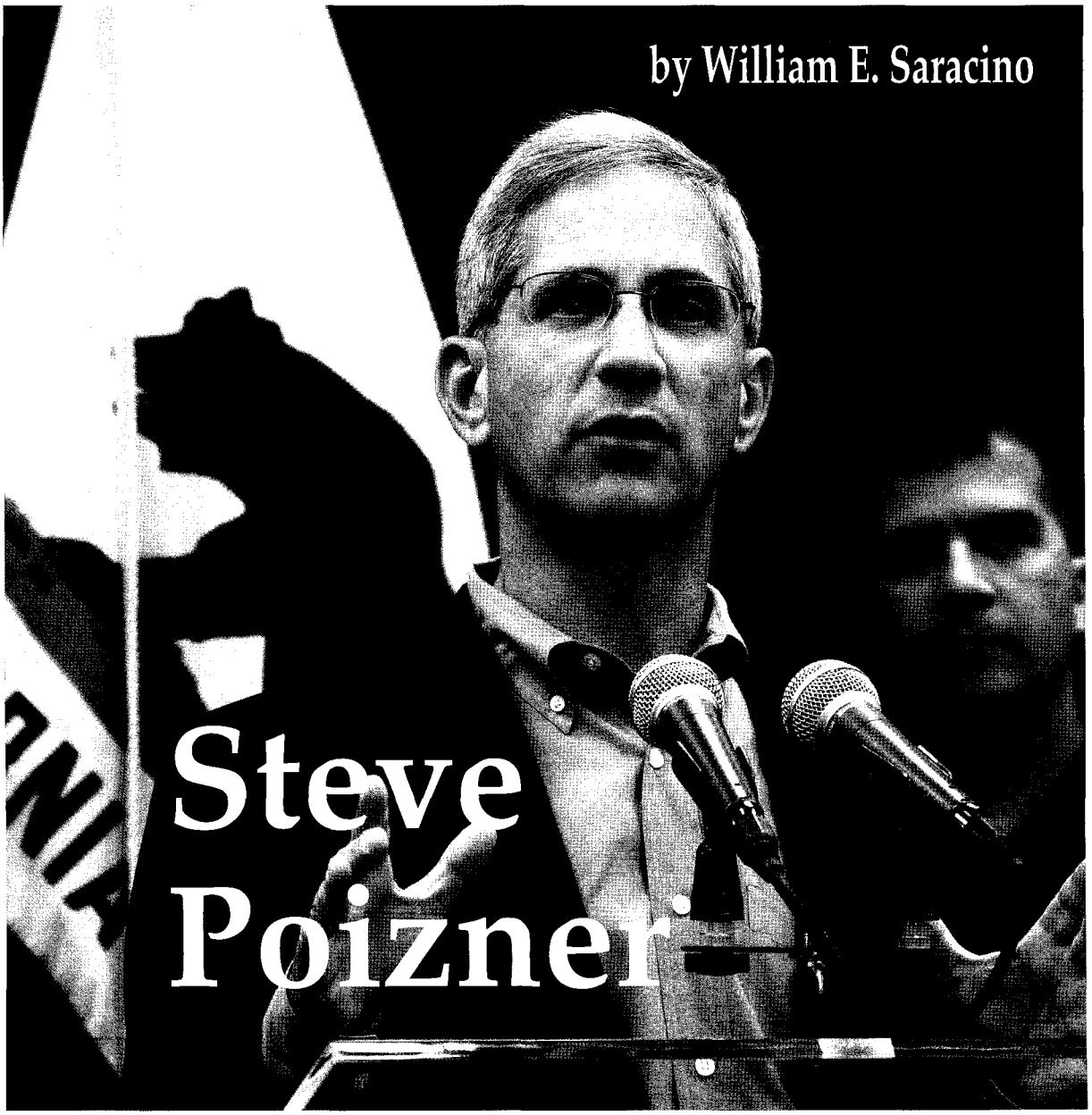

A short year ago, in the run-up to the GOP November collapse at the polls, I was discussing the 2010 governor's race with a group of what passes in California for political cognoscenti (for UCLA graduates that means really smart folks). The near unanimous opinion was that with Obama likely to sweep into the White House and bring a strong Democrat Congress with him, and with California's returns likely among the most Democrat in the nation, the GOP had no chance in 2010 to elect a governor so the identity of the nominee was irrelevant.

So much for the "really smart folks." I hereby coin a new word, duh-noscenti, though in practical terms it should only be applied to those earning more than $10,000 per month for their political "expertise." As we officially enter fall of 2009 the poll numbers of The Promised One in the Oval Office are cratering, Republicans hold a 6-to-8 percent lead in the generic congres-

William E. Saracino is a member of California Political Review's *editorial board.*

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sional ballot for 2010, and early indications are that a classic landslide-making ingredient — a depressed turnout among one party's base — is rearing its ugly head among Donkey Party voters. Suddenly, it begins to look as though having an "R" after your name could be an advantage in 2010.

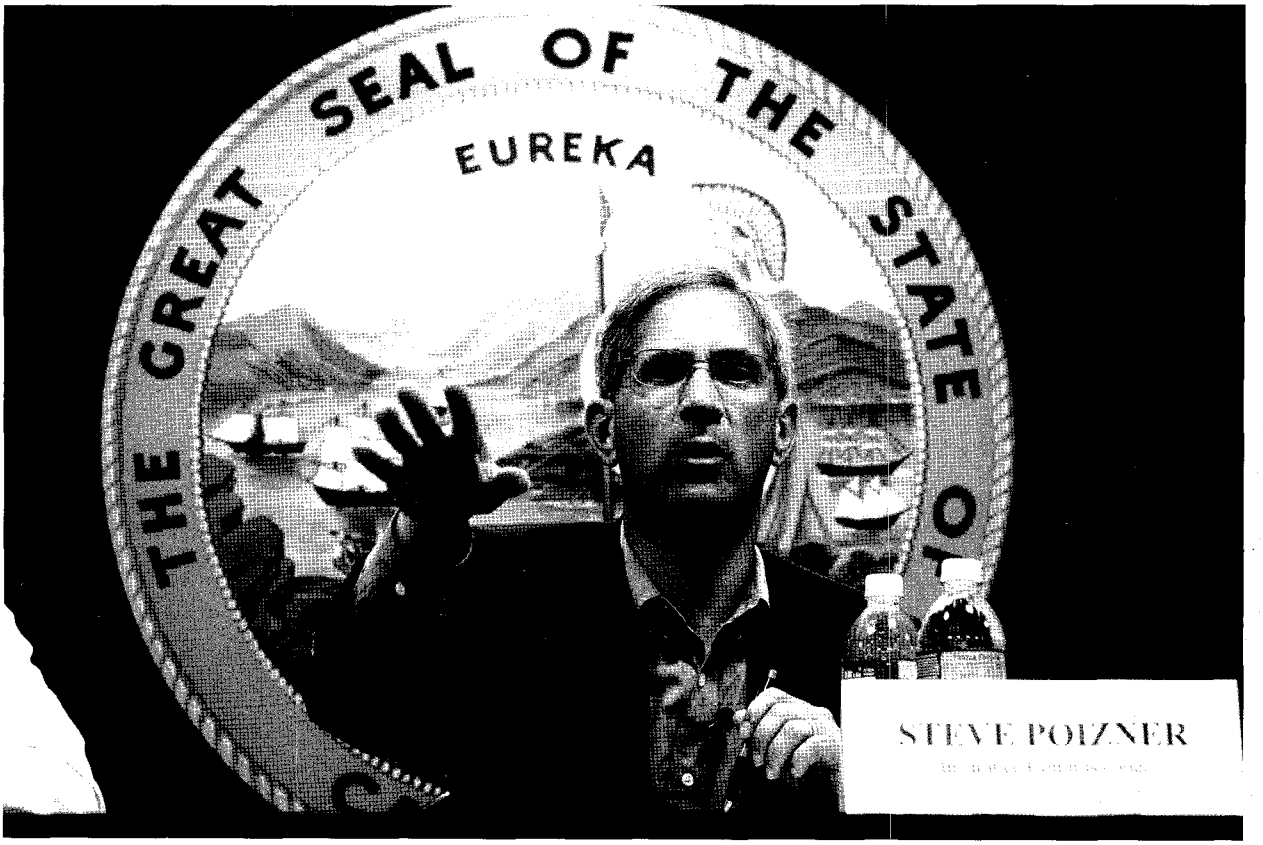
BUT THIS IS CALIFORNIA

"Sure sure, but this is California," I hear you mutter. Indeed it is, so let's look at what the California electorate has done in recent years. In 2003, they votd 62 percent Republican, for gubernatorial candidates running on anti-tax, smaller government platforms. In 2006, they re-elected a Republican governor whose campaign consisted of blasting Phil Angelides for wanting to raise taxes. (I know, the GOP governor who ran that campaign decided to raise taxes a nanosecond after he was safely re-elected, but for this analysis what counts is the message that moved Californians to vote as they did).

In 2008, with Obama winning approximately 97 percent of the California vote, those same voters rebuked the state Supreme Court and restored traditional marriage by a margin of 600,000 votes. A "parental consent for minor's abortion" proposition on the same ballot, outspent ten-to-one, nonetheless received 48 percent of the vote. Last May, voters gave a 60 percent-plus thumbs down to tax-raising propositions supported by the governor and both Democrat and Republican legislative leaders. These actions are not those of an electorate that's intractably liberal or Democrat.

The Republican Pachyderm still has a pulse in California, but, as these results prove for the ten-thousanth time, only when it provides the electorate a platform of solid, mainstream Republican principals — those that triumphed in '03, '06, '08, and '09 — in reasoned and understandable ways. The gubernatorial candidate best suited to do this next year in California's gubernatorial race is Insurance Commissioner Steve Poizner.

In the way of full disclosure, I wrote a cover



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story on Poizner for this publication in 2006 when he ran for Insurance Commissioner. In the course of doing that I spent an hour or so with him and found him personable and knowledgeable. Those two attributes seem to take on added importance for me as I get older. It is

Personable and knowledgeable aren't enough. Candidates must keep faith, after they are elected, with the voters who support them and an unshakeable commitment to basic conservative principals.

true, I had the same experience with the current governor while working on a story for this journal in 2003. His actions in the intervening years prove starkly that personable and knowledgeable aren't enough. An understanding that candidates must keep faith, after they are elected, with the voters who support them and an unshakeable commitment to basic conservative principals — which simply means the toughness to stick to them under-fire — are a *sine qua non* for me now (for UCLA graduates, *sine qua non* means ... oh, never mind, look it up).

Poizner has both the commitment and the toughness. He has paid his dues, has demonstrated resilience under fire and exudes a palpable enthusiasm for Republican ideas — qualities the other two candidates for governor in 2010 lack. This does not mean that I agree with every nuance of every position Poizner has taken — I do not. To his credit, he was candid and straightforward in discussing policy differences during our 2006 interview. Even while discussing areas of disagreement he was also always prepared to bring the discussion

back to the bigger picture, showing that our outlooks meshed 85 to 90 percent of the time.

And it is the big picture that must rule in decisions such as these - the perfect should not be the enemy of the good. Somebody is going to be elected Governor in 2010, and the closer you look at the other Republican candidates, let alone the looney-tunes competition in the Democrat primary, the better Poizner looks both for June and November.

For readers unfamiliar with the basic biography, Poizner graduated first in his class at the University of Texas (the one truly black mark on his resume for this Trojan who hasn't forgotten or forgiven the 2006 Rose Bowl); then received a degree in business from Stanford. He served as a White House Fellow, founded a high-tech company and eventually sold it for a gazillion and a half dollars. At that point, he could have done anything he wanted. He could be cruising the world in the QE II's Windsor suite or on his own mega-yacht (the latter would be my choice). He could be living the lifestyle of the rich and famous and vacuous. Instead he's spent his time trying to make California more livable. A list of his civic and charitable activities will likely dwarf that of his opponents. He even volunteered to teach, for free, in San Jose public schools for a year. Though he can be wonkish at times, an intense commitment to the power of ideas — and in Poizner's case they are over-

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whelmingly the right ideas — shines through.

He spent a sizeable chunk of his personal fortune running for a difficult-for-Republicans Assembly seat in 2004, coming closer to winning than any GOP nominee in that district had done for years. Undaunted, he spent 2005 traveling the state, preaching the gospel of smaller, more efficient government as he prepared to run for Insurance Commissioner. He won that office handily in 2006 and has seemed almost ubiquitous in his travels around the state to address Republican and conservative organizations ever since. That is, he shows none of the Wilsonite scorn for the GOP rank-and-file or its core beliefs that the major media demands incessantly from Republicans. On the contrary, he respects these all-important GOP foot-soldiers, and shows it by discussing with them honestly the areas in which he agrees with them and those where he does not. There will be no foolish talk about conservative "irrelevance" from this governor. Withstanding intense pressure from GOP powerbrokers, he opposed the May special election tax-hiking propositions, and supports the part-time Legislature initiative.

suspect that if we lined up the three GOP gubernatorial hopefuls to compare and contrast their views on critical issues we would find much more agreement than discord. That reduces the relevant considerations to 1) which of them stands the best chance of winning in November, and 2) once victorious, which would be able to clean up the mess created during the past 12 years (unfortunately, any honest assessment of California's current condition must include the current governor's two terms as part of this colossal mess).

As to point one, Steve Poizner has run for and won statewide office. Meg Whitman has hardly ever voted, let alone actually put her name and beliefs on the line. Tom Campbell's one statewide run resulted in a razor thin 2,200,000-vote defeat to Diane Feinstein. On point two, exceptional intestinal fortitude and courage under fire will be necessary to right the floundering S.S. California. Poizner has shown he has the necessary true grit. When Mr. Schwarzenegger (and some GOP Quislings) revealed their plans to raise taxes last February, Poizner not only vociferously opposed their insanity but also funded a website — "Not Another Dime" — to rally those opposition to the tax increase and provide informationon the issue. Despite intense pressure from GOP powerbrokers, he opposed, spoke against, and encouraged resistance to the May tax-hike propositions. Meg Whitman, while a latecomer to the cause, did in fact oppose the propositions. Tom Campbell supported them. When the Democrats and public employee unions put their phony term limit "reforms" on the 2008 ballot, Poizer again helped organize the opposition, donating $2.5 million to the campaign. If anyone is unsure of his opinion of what ails Sacramento, he supports the initiative to restore California's Legislature as a part time body.

Whitman and Campbell, knowing what it takes to win a Republican primary, will certainly be able to talk the talk, but Poizner alone among them has actually walked the walk. An honest appraisal of next year's election must confront an elephant in the room: Arnold Schwarzenegger and the Schwarzenegger legacy of vast damage to the Republican brand in California. As a recall candidate, he promised to

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"blow up the boxes" in Sacramento, to perform a "clean sweep." He tried early on, if feebly, to keep some of those promises. But facing a pugnaciously recalcitrant Democrat Legislature (which should certainly have come as no surprise to him) and the resounding defeat in 2005 of his special election propositions, he abandoned his campaign promises *en masse* and became, effectively, a liberal Democrat. Currying favor with public employee unions and nurturing an activist, rapidly expanding government were the new order of the day.

Seeking re-election in 2006, he reverted to "Mr. No Tax," the merciless pummeler of Phil Angelides, citing Angelides' refusal to promise no tax inceases, promises Ahnolt gave freely. Showing he held his promised word no more sacredly than during and after the recall, immediately after re-election, Schwarzenegger resumed the role of salesman for tax hikes, going so far as to toy with abandoning the Proposiion 13 two-thirds vote requirement to do so. This year he brow-beat and bought enough Republican legislative votes to force through the largest state tax increase in American history, then put even more tax increases on the ballot in May. He toured the state preaching horror, chaos, and anarchy if voters didn't approve these measures to raise their taxes even more than he and the Legislature had already. The voters delivered a thundering "no" to this nonsense, and *hesto-presto,* yet another Schwarzenegger reinvention appeared: another reversion to the anti-tax, small government true believer.

Ultimately, it is of little importance which version of this dizzying embarrassment of Schwarzeneggers is "true." What matters, deeply, is the extent to which his flip-flopping — claiming, abandoning, then re-claiming positions, all the while failing to deliver on his promises either to reduce or expand the weight of government burdening the people — has confused voters and convinced them they can trust Republicans neither to keep their word or even to perform competently to achieve their objectives once in office. Once, voters could rely on all GOP factions to stand firmly on one Gibralter-esque rock: low taxes and small, efficient government. All the debates on abortion, term limits, definition of marriage, or any other issues aside, at the end of the day Californians knew the GOP stood for more money in their pockets, *i.e.,* for lower taxes and less government. Now voters have seen a GOP governor fight desperately agaisnt these very causes and, through arm-twisting and vote-buying, hookwinking GOP legislators into following his lead.

None of this took place quietly with whispers in the dead of night. Nor did it occur any great length time ago. A mere four months back, the governor told us that raising taxes was the GOP's new Holy Grail. It brought on what columnist George Will called a "dialectic of disgust" engulfing California voters, and represents the conundrum facing any future GOP nominee for governor. So: why should voters believe it when Poizner or Whitman or Campbell say they will lead the way in lowering taxes and winning a smaller, more efficient government?

This is no small hurdle. The Republicans nominee will start the campaign wearing the Schwarzenegger albatross around his or her neck, a dead weight tied to one leg, that must be removed before expecting to achieve any traction among voters on issues. OF course, any campaign problem can be overcome — if it is the right campaign by the right candidate. Whether the Democrats nominate seemingly 87-year-old Moonbeam Brown or Mayor of America's Weirdest City Gavin Newsome, running to the right of the Democrat on taxes and spending ought to be doable – and, frankly, must be done if the GOP is to have any shot at all. Accomplishing this task means restoring voter confidence in Republicans. That will require a combination of talent, toughness, intelligence, passion, and ideas — and an ability to communicate those ideas and be believed. With due respect to the former business CEO and the former congressman, Steve Poizner is the one candidate who possesses all the requisite qualities. Every candidate makes promises. Poizner alone can re-assure wary voters by pointing to what he has done. He is, by far, the Republican best equipped to lead the Party to a November victory. CPR

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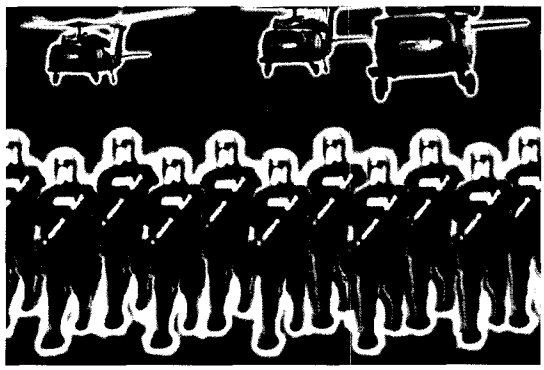
The ACLU Police State

And the Boy Scouts' heroic resistance to it



Alexis de Toqueville, the astute French world traveler and observer of early 19th Century America, wrote extensively in his classic text, *Democracy in America*, about Americans' unique tendency to form private associations for any number of pursuits: "In no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America." (Vol. 1, chap. 12.) Noting that these private associations performed many functions government could not perform, he concluded that the liberty of association has become a necessary guarantee against a tyranny of the majority and the arbitrary power of a prince:

"The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society."

DE TOQUEVILLE'S PROPHECY

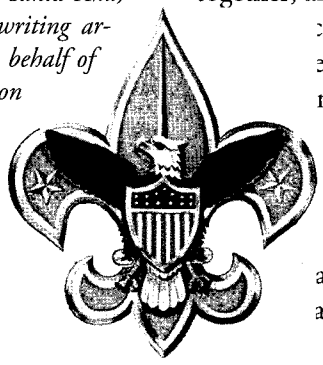
Near the end of his treatise, almost as if he were warning us of the slippery slope of public health care or government bailouts of distressed industries, de Toqueville presciently predicted:

"A government might perform the part of some of the largest American companies, ... but what political power could ever carry on the vast multitude of lesser undertakings which the American citizens perform every day, with the assistance of the principle of association? .... The more [government] stands in the place of associations, the more will individuals, losing the notion of combining together, require its assistance ...." (, Vol. 2, chap. 5.) Based on his assessment that the rise and diversity of private associations of commercial, political, religious, and moral character is what governs America's future success, he concluded: "Nothing, in my opinion, is more deserving of our attention than the intellectual and moral associations of America." However, de Toqueville also darkly predicted that, if American law began to limit or discourage private ventures and associations significantly, it would bring a great chilling of American ingenuity and creativity:

"When some kinds of associations are prohibited and others allowed, it is difficult to distinguish the former from the latter beforehand. In this state of doubt men abstain from them altogether, and a sort of public opinion passes cur-

:h tends to cause any association
:ver to be regarded as a bold and al-
most an illicit enterprise."

"It is therefore chimerical to suppose that the spirit of association, when it is repressed on some one point, will nevertheless display the ame vigor on all others ...." (, Vol. 2, ap. 7.)



Paul A. Hoffman is an attorney practicing business litigation and intellectual property law in Santa Ana, California. He has donated many hours writing articles and pro bono amicus curiae briefs on behalf of the Individual Rights Foundation, a division of the David Horowitz Freedom Center, in support of the Boy Scouts of America. For a full description of current and past case law seeking to suppress the Boy Scouts-associational rights, please go to their legal affairs web site, located at www.bsalegal.org.

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In other words, de Toqueville is saying that, as private businesses and associations are denied in any significant way the ability to pursue private profit, religious, moral, or political ends, the seedbeds of virtue and creativity that produced America's greatness and prosperity will be destroyed.

ONE SALIENT IN THE LEFT'S WAR ON LIBERTY

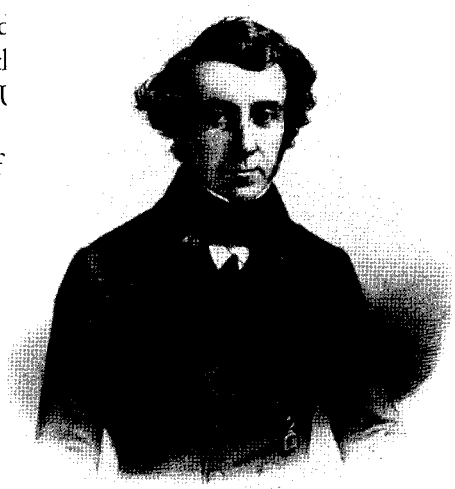
Without doubt, the Boy Scouts of America (which celebrates its Centennial next year) clearly qualifies as one of those unique American "moral associations" de Toqueville described as so necessary for building good citizens in a democracy and that act as an essential bulwark against despotism. As many former Scouts (including myself) will attest, Boy Scouts builds positive character, citizenship, physical and moral fitness, leadership, and teamwork through the mechanism of private association. In short, it is a quintessential Toquevillean "association."

Unfortunately, some factions in our modern culture do not view Boy Scouts and similar diverse associations as essential seedbeds of a democratic society. Today we face an increasing threat to our civil liberties in the form of activist legislators, judges, and lawyers who seek to use the power of the state to enforce their own notions of political orthodoxy under the guise of such benign-appearing and well-intended concepts as "equality," "non-discrimination," and "tolerance." (See: Robert Bork, *Coercing Virtue: The Worldwide Rule of Judges.)*

Left-leaning judges and advocacy groups often justify state regulation of our civil liberties as necessary to preserve someone's right not to be offended. For example, California courts have ruled that employees cannot post religious messages in their cubicles that might "offend" someone's sexual orientation. They have also held that Christian clubs cannot refuse membership to those who refuse to abide by the club's moral code. In short, one has fewer constitutional rights at work and school than on the public street. However, if rights of expression and association can be checked at the workplace or school house door, that trend may soon spread to other places and contexts as well.

One of the left's legal strategies is to use anti-discrimination laws not only to rid commercial establishments of discriminatory practices, but to limit and control the rights of speech and association of purely private associations whose beliefs and practices offend the cultural elite. This elitist trend is best illustrated by the ACLU's litigation against the Boy Scouts. Notwithstanding their claim that they neutrally defend First Amendment rights, the ACLU has failed to ever defend the First Amendment rights of the Boy Scouts, and has actively opposed the Boy Scouts' First Amendment rights in court. In case after case, the ACLU has represented plaintiffs who seek to use the courts to force the Scouts to alter their membership requirements or the recitation of their Scout Oath. In *Curran vs. Mount Diablo Council of the Boy Scouts of America* (1998), for example, the ACLU represented a homosexual plaintiff who sought a court order appointing him as an assistant scoutmaster. The ACLU argued that the Boy Scouts was just another "business establishment" under California's public accommodations law, no different from a restaurant that is required to provide dining to everyone. Never mind that the Boy Scouts have a moral viewpoint or that they intend Scoutmasters to serve as role models through their example and that the parents who enroll their sons in the organization want the role the boys are taught to reflect their values.

The Boy Scouts and their allies filec arguing tl the ACLI position would, if adopted , lead to absurd results that would obliter ate the right of express ive associati on. For example, the ACLU's reasoning, if applied consistently, would mean a black civil rights group would have to accept Ku Klux



Alexis de Toqueville

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The cross at Coronado, California

Klansmen as members on grounds that refusal would constitute discrimination; Jewish fraternal organizations would be required to accept neo-Nazis; and homosexual political organizations like ACT-UP would be required to accept membership applications from activist Christian fundamentalists.

Fortunately, the California Supreme Court agreed with the Scouts and, voting 7-0, said the Scouts were not a "business establishment" and therefore not subject to California's public accommodation law. The New Jersey Supreme Court, however, reached the opposite conclusion in *Boy Scouts of America v. Dale* (2000). In *Dale,* an assistant scoutmaster told a newspaper reporter his views as a homosexual activist. When the Scouts dismissed him from his youth leadership position as an improper "role model" for young scouts, Dale sued under the New Jersey public accommodations law. The New Jersey Supreme Court, also ruling 7-0, held that New Jersey's law applied to the Scouts and that the group would be required to accept Mr. Dale.

These are exactly the sort of inconsistencies in legal interpretation that the United States Supreme Court is intended to eliminate by making a final ruling to govern all. The nation's highest court thus granted review to the case. Acknowledging that government attempts to regulate membership of expressive associations pose First Amendment dangers, the ACLU's brief nevertheless advocated large-scale suppression of associational rights by asking the Court to adopt a radical new position — to allow state anti-discrimination laws to trump the First Amendment because "virtually any law truly designed to ensure equal opportunity serves government interests of the highest order." The ACLU thus argued that a *statute* designed to ensure "equality" should outweigh a constitutional provision guaranteeing the liberties of expression and association.

Again fortunately, in June 2000, voting 5-4, the U.S. Supreme Court rejected the ACLU argument, holding that the Boy Scouts' First Amendment rights include their right to instill traditional moral values through the role models they permit to participate in their organizations and therefore could not be forced by government to accept homosexual members. Professor David Bernstein has described the Dale decision as "the greatest victory yet won by civil liberties partisans in the conflict between anti-discrimination laws and civil liberties." (D. Bernstein, *You Can't Say That!: The Growing Threat to Civil Liberties From Antidiscrimination Laws* (Cato Institute, 2003), pg. 104.) The landmark *Dale* ruling marks the first time a private membership club has successfully petitioned the Supreme Court to overturn the application of a public accommodations law based on the right of expressive association. *Dale* is thus a strong bulwark for pluralism and the classic right of private association.

THE LEFT STRIKES BACK

The Boy Scouts soon discovered that, their victory in *Dale* notwithstanding, the left would not abandon its crusade to launch an anti-Scout persecution. Instead, it merely changed strategy. Left extremists no longer sought to regulate the Scouts' membership directly, but instead to harass and try to embarrass them by blocking Scout access to public benefits and their use of public facilities and park lands. And the usual ACLU arrogance factor is present: the whole campaign to discriminate against the Scouts is defended as *upholding* anti-discrimination law. For example, Boy Scouts had participated for 30 years in the Connecticut state employee charitable campaign (which received no state funds), a program that allowed state employees to deduct contributions directly from their pay

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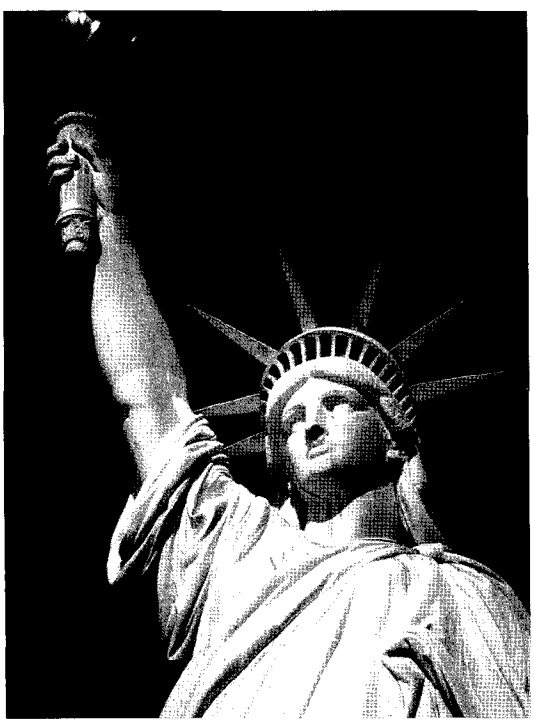
checks. In 2004, the Second Circuit Court of Appeal, in *Boy Scouts of America v. Wyman,* held that Boy Scouts were discriminating by excluding homosexual activists and therefore could be excluded from participation in the charitable campaign, notwithstanding that more than 900 other private charities were permitted to participate in the charitable campaign, including the Girl Scouts, homosexual advocacy groups, and minority associations that limit their benefits to particular minority groups, as discriminatory a basis as anything done by the Scouts.

As another example, in *Barnes-Wallace v. Boy Scouts of America* (2004), the ACLU is representing lesbian and atheist couples who've sued the City of San Diego for its longstanding leases of portions of park lands to the Boy Scouts. These couples have never so much as attempted to use these park lands, even though the Boy Scouts allow non-Scouts to use the land on a non-discriminatory, first-come basis. Other non-profit associations, including some religious groups, also lease city park lands on similar terms. However, the ACLU targets the Boy Scout lease alone as an endorsement of a religious organization (the Scouts affirm a "duty to God") as a violation of the First Amendment used to advance religion. In April 2004, Judge Napoleon Jones, a Carter appointee, agreed with the ACLU and granted summary judgment for the plaintiffs. The Boy Scouts appealed.



The Ninth Circuit recently issued a preliminary opinion radically expanding the scope of who is allowed to sue under the First Amendment's Establishment Clause. According to the Ninth Circuit, anyone who is merely psychologically offended by Boy Scout policies may sue, even with no evidence of a denial of tangible benefits. The Scouts have asked the Supreme Court to review the case. I joined fellow attorneys Manuel Klausner and Ilya Shapiro in filing an *amicus* brief on behalf of the Individual Rights Foundation and the Cato Institute. The brief urges the Court to review the case and curb the Ninth Circuit's dangerously broad interpretation of "standing" under the Establishment Clause. The Supreme Court is expected to rule on the Scouts' petition for review September 28, 2009.

SUPPORT THE SCOUTS IN DEFENSE OF LIBERTY

As the Supreme Court's 5-4 decision in Dale and subsequent cases illustrate, it is a close battle between the tyrannical forces of political correctness and those who stand with human freedom. The call to duty is clear. The liberties of all persons and associations, not just the Boy Scouts, are undermined as long as judges and lawyers continue to reject recognition of Christian and Scouting associations' constitutional rights.

"The ACLU," Mark Pulliam wrote in the May/June 2004 *California Political Review,* "despite its lofty rhetoric and noble-sounding name, is trying to stifle all forms of religious expression, and to drive dissenters from the public square. The Boy Scouts are in the ACLU's cross-hairs today, but tomorrow it could be the Salvation Army, religious charities, or your local church or synagogue. It is not just the Boy Scouts, but all Americans who cherish freedom that have a stake in this fight." ("Triumph of Intolerance," page 18.)

Accordingly, we must learn to become activists in the defense of our civil liberties if our children and future generations of Americans are to enjoy the freedoms we have known. Only with your support can the Boy Scouts and other private associations continue to fight successfully this tyrannical campaign of suppression of their views carried on by ACLU lawyers, aided by other enemies of liberty. CPR

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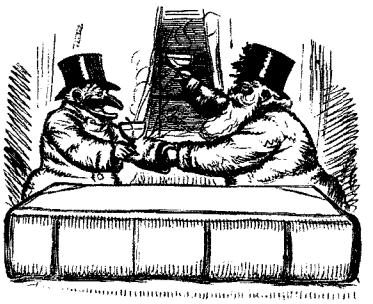

HISTORY

The things that are God's

The Jeffersonian principle that the state may not violate 'certain unalianable rights' 'endowed by our Creator' descends from ancient lineage and deep-buried roots.

BY JOHN HENRY NEWMAN

In response to reader requests for more from John Henry Newman following CPR's *publication of his "History of the Turks" series (*CPR, *May/June 2008 through March/April 2009), we herewith offer the following excerpts from Newman's historical sketch of a clash over a fundamental religious freedom issue from the era of the late Roman Empire. This essay was written about 1836. Newman wrote as a member of the Anglican clergy.*

— *editor*

IN THE opposition that Ambrose made to the Arians, as already related, there is no appearance of his appealing to any law of the [Roman] Empire in justification of his refusal to surrender the Basilica to them. He rested it upon the simple basis of the Divine Law, a common-sense argument which there was no evading. "The Basilica has been made over to Christ; the Church is His trustee; I am its ruler. I dare not alienate the Lord's property. He who does so, does it at his peril." Indeed, he elsewhere expressly repudiates the principle of dependence in this matter on human law. "Law," he says, "has not brought the Church together, but the faith of Christ." However, Justina [the Emperor's mother and an Arian] determined to have human law on her side. She persuaded her son to make it a capital offence in any one, either publicly or privately, even by petition, to interfere with the assemblies of the Arians; a provision that admitted a fair, and might also bear, and did in fact receive, a most tyrannical interpretation. Benevolus, the secretary of state, from whose office the edict was to proceed, refused to draw it up, and resigned his place; but of course others less scrupulous were easily found to succeed him. At length it was promulgated on January 21 of the next year, A.D. 386, and a fresh attempt soon followed on the part of the [Imperial] Court to take possession of the Portian Basilica, which was "without the walls."

The line of conduct Ambrose had adopted remained equally clear and straight, whether before or after the promulgation of this edict. It was his duty to use all the means Christ has given the Church to prevent the profanation of the Basilica. But soon a new question arose for his determination. An imperial message was brought to him to retire from the city at once, with any friends who chose to attend him. It is not certain whether this was intended as an absolute command, or

John Henry Newman, English divine, philosopher, man of letters, and leader of the Tractarian Movement, lived from 1801 to 1890. This article is the concluding installment of excerpts from Newman's article "What does St. Ambrose say about it?", published in The British Magazine *as part of a series between 1833 and 1836. Part I of these excerpts appeared as "The things that are God's" in this space,* CPR, *May/June 2009.*

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(as his words rather imply) a recommendation on the part of government to save themselves the odium, and him the suffering, of public and more severe proceedings. Even if it were the former, it does not appear that a Christian bishop, so circumstanced, need obey it; for what was it but in other words to say, "Depart from the Basilica, and leave it to us?" — the very order he had already withstood. The words of Scripture, which bid Christians if persecuted in one city to flee to another, are evidently, from the form of them, a discretionary rule, grounded on the expediency of each occasion, as it arises. A mere threat is not a persecution, nor is a command; and though we are bound to obey our civil rulers, the welfare of the Church has a prior claim upon our obedience. Other bishops took the same view of the case with Ambrose; and, accordingly, he determined to stay in Milan till removed by main force, or cut off by violence.

THE READER will hear his own words in a sermon he delivered upon the occasion: "I see that you are under a sudden and unusual excitement," he said, "and are turning your eyes on me. What can be the reason of this? Is it that you saw or heard that an imperial message had been brought to me by the tribunes desiring me to depart hence whither I would, and to take with me all who would follow me? What! did you fear that I would desert the Church, and, for fear of my life, abandon you? Yet you might have attended to my answer. I said that I could not, for an instant, entertain the thought of deserting the Church, in that I feared the Lord of all more than the Emperor of the day: in truth that, should force hurry me off, it would be my body, not my mind, that was got rid of; that, should he act in the way of kingly power, I was prepared to suffer after the manner of a priest.

"Why, then, are you thus disturbed? I will never leave you of my own will; but if compelled, I may not resist. I shall still have the power of sorrowing, of weeping, of uttering laments: when weapons, soldiers, Goths, too, assail me, tears are my weapons, for such are the defences of a priest. In any other way I neither ought to resist, nor can.

"No one can deny that in what we say we pay to our sovereign due honour. What indeed can do him higher honour than to style him a son of the Church? In saying this, we are loyal to him without sinning against God. For the Emperor is within the Church, but not over the Church; and a religious sovereign seeks, not rejects, the Church's aid. This is our doctrine, modestly avowed, but insisted on without wavering. Though they threaten fire, or the sword, or transportation, we, Christ's poor servants, have learned not to fear. And to the fearless nothing is frightful; as Scripture says, 'Their blows are like the arrows of a child.'"

PSALMODY

Mention is made in this extract of the Psalmody that Ambrose adopted about this time. The history of its introduction is curiously connected with the subject before us, and interesting, inasmuch as this was the beginning of a change in the style of Church music that spread over the West, and continues even among ourselves to this day; it is as follows:

Soldiers had been sent, as in the former year, to surround his church, in order to prevent the Catholic service there; but being themselves Christians, and afraid of excommunication, they went so far as to allow the people to enter, but would not let them leave the building. This was not so great an inconvenience to them as might appear at first sight: for the early Basilicas were not unlike the heathen temples, or our own collegiate chapels, that is, part of a range of buildings, which contained the lodgings of the ecclesiastics, and formed a fortress in themselves that could easily be fortified from within or blockaded from without. Accordingly, the people remained shut up within the sacred precincts for some days, and the bishop with them. There seems to have been a notion, too, that he was to be seized for exile, or put to death; and they naturally kept about him to "see the end," to suffer with him or for him, according as their tempers and principles led them. Some went so far as to barricade the doors of the Basilica; nor could Ambrose prevent this proceeding, unnecessary as it was, because of the good feelings of the soldiery towards them, and indeed impracticable in such completeness as might be sufficient for security.

Sacred chanting had been one special way the Catholics of Antioch had kept alive, in Arian times, the spirit of orthodoxy. And from the first a peculiar kind of singing — the antiphonal or responsorial, answering to our cathedral chanting — had been used in honour of the sacred doctrine that heresy assailed. Ignatius, the disciple of St. Peter, was reported to have introduced the practice into the Church of Antioch, in the doxology to the Trinity. Flavian, afterwards bishop of that see, revived it during the Arian usurpation, to the great edification and encouragement of the oppressed Catholics. Chrysostom used it in the vigils at Constantinople, in opposition to the same heretical party; and similar vigils had been established by Basil in the monasteries of Cappadocia. The assembled multitude, confined day and night within the gates of the Basilica, were in the situa-

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St. Ambrose

tion of a monastic body without its discipline, and Ambrose rightly considered that the novelty and solemnity of the oriental chants, in praise of the Blessed Trinity, would both interest and sober them during the dangerous temptation to which they were now exposed. The expedient had even more successful results than the bishop anticipated; the soldiers were affected by the music, and took part in it; and, as we hear nothing more of the blockade, we must suppose that it thus ended, the government being obliged to overlook what it could not prevent.

IT MAY be interesting to the reader to see Augustine's notice of this occurrence, and the effect of the Psalmody upon himself, at the time of his baptism. "The pious populace (he says in his *Confessions*) was keeping vigils in the church prepared to die, O Lord, with their bishop, Thy servant. There was my mother, Thy handmaid, surpassing others in anxiety and watching, and making prayers her life.

"I, uninfluenced as yet by the fire of Thy Spirit, was roused however by the terror and agitation of the city. Then it was that hymns and psalms, after the oriental rite, were introduced, lest the spirits of the flock should fail under the wearisome delay."

In the same passage, speaking of his baptism, he says: "How many tears I shed during the performance of Thy hymns and chants, keenly affected by the notes of Thy melodious Church! My ears drank up those sounds, and they distilled into my heart as sacred truths, and overflowed thence again in pious emotion, and gushed forth into tears, and I was happy in them."

Elsewhere he says: "Sometimes, from over-jealousy, I would entirely put from me and from the Church the melodies of the sweet chants which we use in the Psalter, lest our ears seduce us; and the way of Athanasius, bishop of Alexandria, seems the safer, who, as I have often heard, made the reader chant with so slight a change of note, that it was more like speaking than singing. And yet when I call to mind the tears I shed when I heard the chants of Thy Church in the infancy of my recovered faith, and reflect that at this time I am affected, not by the mere music, but by the subject, brought out, as it is, by clear voices and appropriate tune, then, in turn, I confess how useful is the practice." Such was the influence of the Ambrosian chants when first introduced at Milan by the great bishop whose name they bear; there they are in use still, in all the majestic austerity that gave them their original power, and a great part of the Western Church uses that modification of them that Pope Gregory introduced at Rome in the beginning of the seventh century.

Ambrose implies, in the sermon from which extracts were given above, that a persecution, reaching even to the infliction of bodily sufferings, was at this time exercised upon the bishops of the Exarchate. Certainly he himself was all along in imminent peril of his life, or of sudden removal from Milan. However, he made it a point to frequent the public places and religious meetings as usual; and indeed it appears that he was as safe there as at home, for he narrowly escaped assassination from a hired ruffian of the Empress's, who made his way to his bed-chamber for the purpose. Magical arts were also practised against him, as a more secret and certain method of ensuring his destruction.

QUESTIONS OF FAITH

I ought to have mentioned, before this, the challenge sent to him by the Arian bishop to dispute publicly with him on the sacred doctrine in controversy; but was unwilling to interrupt the narrative of the contest about the Basilica. I will here translate portions of a letter sent by him, on the occasion, to the Emperor.

To the most gracious Emperor and most happy Augustus Valentinian, Ambrosius Bishop:

Dalmatius, tribune and notary, has come to me, at your Majesty's desire, as he assures me, to require me to choose umpires, as Auxentius[1] has done on his part. Not that he informed me who they were that had already been named; but merely said that the dispute was to take place in the consistory, in your Majesty's presence, as final arbitrator of it.

I trust my answer will prove sufficient. No one should call me contumacious, if I insist on what your father, of blessed memory, not only sanctioned by word of mouth, but even by a law: That in cases of faith, or of ecclesiastics, the judges should be neither inferior in function nor separate in jurisdiction — thus the rescript runs; in other words, he would have priests decide about priests. And this extended even to the case of allegations of wrong conduct.

When was it you ever heard, most gracious Emperor, that in a question of faith laymen should be judges of a bishop? What! have courtly manners so bent our backs, that we have forgotten the rights of the

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priesthood, that I should of myself put into another's hands what God has bestowed upon me? Once grant that a layman may set a bishop right, and see what will follow. The layman in consequence discusses, while the bishop listens; and the bishop is the pupil of the layman. Yet, whether we turn to Scripture or to history, who will venture to deny that in a question of faith, in a question, I say, of faith, it has ever been the bishop's business to judge the Christian Emperor, not the Emperor's to judge the bishop?

When, through God's blessing, you live to be old, then you will know what to think of the fidelity of that bishop who places the rights of the priesthood at the mercy of laymen. Your father, who arrived, through God's blessing, at maturer years, was in the habit of saying, "I have no right to judge between bishops;" but now your Majesty says, "I ought to judge." He, even though baptized into Christ's body, thought himself unequal to the burden of such a judgment; your Majesty, who still have to earn a title to the sacrament, claims to judge in a matter of faith, though you are a stranger to the sacrament to which that faith belongs.

But Ambrose is not of such value, that he must degrade the priesthood for his own well-being. One man's life is not so precious as the dignity of all those bishops who have advised me thus to write; and who suggested that Auxentius might be choosing some heathen perhaps or Jew, whose permission to decide about Christ would be a permission to triumph over Him. What would pleasure them but blasphemies against Him? What would satisfy them but the impious denial of His divinity — agreeing, as they do, full well with the Arian, who pronounces Christ to be a creature with the ready concurrence of heathens?

I would have come to your Majesty's Court, to offer these remarks in your presence; but neither my bishops nor my people would let me; for they said that, when matters of faith were discussed in the Church, this should be in the presence of the people.

I could have wished your Majesty had not told me to betake myself to exile somewhere. I was abroad every day; no one guarded me. I was at the mercy of all the world; you should have secured my departure to a place of your own choosing. Now the priests say to me, "There is little difference between voluntarily leaving and betraying the altar of Christ; for when you leave, you betray it."

May it please your Majesty graciously to accept this my declining to appear in the Imperial Court. I am not practised in attending it, except in your behalf; nor have I the skill to strive for victory within the palace, as neither knowing, nor caring to know, its secrets.

The reader will observe an allusion in the last sentence of this defence to a service Ambrose had rendered the Emperor and his mother, upon the murder of Gratian; when, at the request of Justina, he undertook the difficult embassy to the usurper Maximus, and was the means of preserving the peace of Italy. This Maximus now interfered to defend him against the parties whom he had on a former occasion defended against Maximus; but other and more remarkable occurrences interposed in his behalf, which shall be mentioned in the next section.

THE END OF THE PERSECUTION

A termination was at length put to the persecution of the Church of Milan by an occurrence of a very different nature from any that take place in these days. St. Ambrose was proceeding to the dedication of a certain church at Milan, that remains there to this day, with the name of "St. Ambrose the Greater"; and was urged by the people to bury relics of martyrs under the altar, as he had lately done in the case of the Basilica of the Apostles. This was according to the usage of those times, desirous thereby both of honoring those who had braved death for Christ's sake, and of hallowing religious places with the mortal instruments of their triumph. Ambrose in consequence gave orders to open the ground in the church of St. Nabor as a spot likely to have been the burying-place of martyrs during the heathen persecutions.

The digging commenced, and in due time two skeletons were discovered, of great size, perfect, and disposed in an orderly way; the head of each, however, separated from the body, and a quantity of blood about. That they were the remains of martyrs, none could reasonably doubt; and their names were ascertained to be Gervasius and Protasius; how, it does not

St. Augustine

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appear, but certainly it was not so alleged on any traditionary information or for any popular object, since they proved to be quite new names to the Church of the day, though some elderly men at length recollected hearing them in former years.

It seems to have been usual in that day to verify the genuineness of relics by bringing some of the energumeni, or possessed with devils, to them. Such afflicted persons were present with St. Ambrose during the search; and, before the service for exorcism commenced, one of them gave signs of horror and distress that were customarily excited by the presence of what had been the tabernacle of divine grace.

The skeletons were raised and transported to the neighbouring church of St. Fausta. The next day, June 18, on which they were to be conveyed to their destination, a vast concourse of people attended the procession. There was in Milan a man of middle age, well known in the place, by name Severus, who, having become blind, had given up his trade, and was now supported by charitable persons. Being told the cause of the shoutings in the streets, he persuaded his guide to lead him to the sacred relics. He came near; he touched the cloth that covered them, and regained his sight immediately.

Now for the evidence on which the whole matter rests. Our witnesses are three: St. Augustine, St. Ambrose, and Paulinus, the secretary of the latter, who, after his death, addressed a short memoir of his life to the former. St. Augustine begins with that which he himself had witnessed in the city of St. Ambrose: "The miracle," he says, "that occurred at Milan while I was there when a blind man gained sight, was of a kind to come to the knowledge of many, because the city is large, and the Emperor was there at the time, and it was wrought with the witness of a vast multitude, who had come together to the bodies of the martyrs Protasius and Gervasius.

Now let us proceed to the evidence of St. Ambrose, as contained in the sermons he preached upon the occasion. In the former of the two he speaks as follows of the miracles wrought by the relics: "Ye know, nay, ye have yourselves seen, many cleansed from evil spirits, and numbers loosed from their infirmities, on laying their hands on the garment of the saints. Thanks be to Thee, Lord Jesus, for awakening for us at this time the spirits of the holy martyrs, when Thy Church needs greater guardianship."

We may corroborate the evidence of those two Fathers with that of Paulinus, who was secretary to St. Ambrose, and wrote his life, about A.D. 411. "About the same time," he says, "the holy martyrs Protasius and Gervasius revealed themselves to God's priest. They lay in the Basilica, where, at present, are the bodies of the martyrs Nabor and Felix. [W]hen the bodies of the holy martyrs were raised and placed on litters, a blind man, by name Severus, who up to this day performs religious service in the Basilica called Ambrosian, when he had touched the garment of the martyrs, forthwith received sight. And by means of these benefits of the martyrs, while the faith of the Catholic Church made increase, by so much did Arian misbelief decline."

[A] great and practical impression was made upon the popular mind in consequence of the alleged miracles: or, in the words of an historian, whose very vocation it is to disbelieve them, "Their effect on the minds of the people was rapid and irresistible; and the feeble sovereign of Italy found himself unable to contend with the favourite of heaven." [2]

[S]o powerfully did all this press upon the Court, that, as the last words of this extract intimate, the persecution was given up, and the Catholics left in quiet possession of the churches.

On the whole, then, are we not in the following dilemma? If the miracle did not take place, then St. Ambrose and St. Augustine, men of name, said they had ascertained a fact that they did not ascertain, and said it in the face of enemies, with an appeal to a whole city, and that continued during a quarter of a century. What instrument of refutation shall we devise against a case like this, neither so violently à priori as to supersede the testimony of Evangelists, nor so fastidious of evidence as to imperil Tacitus or Cæsar?

On the other hand, if the miracle *did* take place, a certain measure of authority, more or less, surely must thereby attach to St. Ambrose — to his doctrine and his life, to his ecclesiastical principles and proceedings, to the Church itself of the fourth century, of which he is one main pillar.

The miracle gives a certain sanction to three things at once, to the Catholic doctrine of the Trinity, to the Church's resistance of the civil power, and to the commemoration of saints and martyrs. CPR

NOTES

1. The Arian bishop, who had lately come from the East to Milan, had taken the name of Auxentius, the heretical predecessor of Ambrose.

2. Gibbon, *History,* chapter 27.

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The Fascist Connection

Liberal Fascism, by Jonas Goldberg, finally clears away Stalin's enduring myth that ending free markets, banishing the rule of law, and imposing one man rule is somehow *not* leftism.

reviewed by Denis Norrington

The seemingly oxymoronic title *Liberal Fascism* probably leads one to believe that the book must either be an excursion into the politically improbable (even impossible) or that the author has hit on and developed historically accurate but previously hidden and unknown themes. In the case of Jonah Goldberg's most recent book, it is absolutely the latter. Rush Limbaugh called Goldberg's book one of the most important publications of recent times and a "must" read for conservatives. He has referred frequently to material from the book on his radio show.

The book's subtitle, printed on its cover page, is "The Secret History of the American Left from Mussolini to the Politics of Meaning," a subject the author covers with thorough documentation, providing fresh, new insights into the dynamics of the American liberal establishment, especially its left wing.

One of the book's initially stated objectives is to attack and, if possible, destroy the knee-jerk conception that links fascism and Nazism not with liberal Democrats (whose favored policies in many respects come straight out of the fascist playbook), but with Republicans and American conservatism. This task should have been undertaken long ago, but has remained mostly unaddressed for two reasons: 1, a somewhat inexplicable Republican Party reluctance to confront and hurl these accusations back at the accusers and, 2, Joseph Stalin's forced use of the term "fascist" in the 1930s as a political propaganda tool to designate and condemn his political rivals.

As to the first, the GOP has largely refrained from responding directly to the fascist/Nazi name calling, partly from ignorance, partly from aloofness, and partly from a misplaced desire to accommodate eve-

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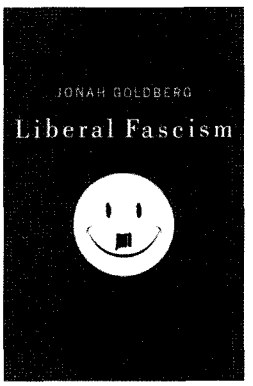
ryone, even its most severe critics. As to the second, Stalin's propaganda apparatus needed a simple way to draw attention away from his own tyrannical actions and to manufacture a myth that he and the "good" communists of the Soviet Union were threatened not by people favoring freedom for themselves and their countrymen, but merely a rival set of dangerous, "evil" tyrants who wanted only to enslave and abuse the people.

The alternatives thus postulated were much to Stalin's benefit: not freedom vs. the tyranny he wanted to make permanent, but a mythical "good" tyranny vs. an evil one, not based on the objective content of the regime the people would have to endure, but merely on the question of who led those regimes: the good Stalin or the bad Trotskys, Hitlers, or Hirohitos. Stalin achieved all this simply by disconnecting the term "fascist" from its actual meaning (which described Stalin and his program as well as it did the other tyrants) and to reduce it to refer only, although universally, to anyone opposing Stalin and his faction.



Liberal Fascism
by Jonah Goldberg
Doubleday
2007
487 pp.

In reality, however, fascism and communism evolved from the same roots. Goldberg designates Revolutionary France of 1789 as the first fascist state in history. There is also extensive evidence that both Mussolini and Hitler partook extensively of Marxist doctrine, although in Hitler's case this was obscured by the extreme racist and nationalist twist Der Fuhrer gave to socialism. While Stalin was well aware of the similarities between his totalitarian dictatorship and that of Hitler, he used the designation of "fascist" first of all against his internal political enemies (Leon Trotsky was extensively identified as a "fascist" by Stalin's propaganda mill) and secondly as a tool for communist parties (then mostly under his control) that were competing for the allegiance of the same social strata — especially in the case of pre-Nazi Germany — as the Nazis: lower-middle-class union laborers, peasant farmers, and small businessmen.

Stalin's designation of his enemies as "fascists" was immediately taken up by intellectuals and politicians on the left and is still used today (sometimes with variations, as when Nancy Pelosi recently described Tea Party activists and the president's Town Hall opponents "Nazis"). Nonetheless, it is liberals and leftists themselves whose political behavior most closely parallels historic fascist regimes and thinkers, especially in the case of such Bolshevik regimes as Lenin's and Stalin's, and those of other communist states. Goldberg deftly traces the intertwining history of fascist ideas and policies with the growth of American liberalism and leftism. Starting with the early 20th century Progressives, he designates Woodrow Wilson's World War I "war socialism" administration as the first "true fascist state" of modern times.

Carefully developing his theme of the history of liberalism's fascination with fascists schemes and ideas, Goldberg surveys, in turn, Roosevelt's New Deal — which took Wilson's war socialism as its model — Lyndon Johnson's "Great Society," and Hillary Clinton's "Brave New Village." In addition, he surveys the fascism of the anti-war left, the fascist and racist roots of the early family planning movement, which ultimately succeeded in winning complete legalization of abortion on demand, and the "green fascism" of today's hard-left environmentalists.

I disagree with one area the book: its characterization of liberalism as a "nice" fascism. As a description contrasting it with Nazi and Bolshevik fascism, it is at least superficially accurate: Americans have seen no mass arrests, concentration camps, or executions for political dissidents (yet). But this appearance may be misleading. Using an incrementalist method to increase the power of the state, liberal fascism chooses its victims carefully, usually targeting isolated individuals who lack resources either to fight back or to publicize the depredations of government officials. In addition, liberal fascism is aided by a compliant public educational system and a left-

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leaning mass media. When liberals take on well-organized, well-funded opposition — in the case, for instance, of affirmative action quotas for Connecticut firemen — it often fails. But when it targets relatively powerless individuals, it usually succeeds (e.g., in the recent Kelo abuse of eminent domain case). Thus "nice" liberal fascism, although "incrementalist," has deprived thousands of Americans of jobs and/or promotions, denied thousands more, on racist or ethnic grounds, of entry into taxpayer-funded universities; and robbed still more thousands of the value of their homes, businesses, and property through regulation imposed by extreme environmentalists.

This quibble over the term "nice" notwithstanding, I say Jonah Goldberg has written one of the few recent books that is, as Rush Limbaugh said, must reading for conservatives. It ties together and dissects in a new way a vast store of historic information: material that can be used readily not only to refute the historic lie linking American conservatives and Republicans to Nazis and other non-communist tyrants, but also to provide much useful ammunition to fight the Obama administration's crusade to fasten more liberal fascism on America.

Not that this book absolutely finishes this all-important topic. I hope the next edition of Liberal Fascism, besides including a chapter on the Obama administration, will more thoroughly explore the relationships linking fascism with Marxism and the Bolshevism of Lenin and Stalin. What parallels, for instance, may be drawn between Lenin's argument that the state should be ruled on a totalitarian basis by a super-educated political vanguard (Lenin's celebrated "addition" to socialist theory) and the Nazi's "fuhrerprinzip"? — German philosopher Hermann Graf Keyserling's term for the idea that, on the basis of Social Darwinism, certain "gifted individuals" were "born to rule," again on an absolutely totalitarian basis. This could prove especially enlightening since most American liberals follow a type of fascism closer to Bolshevism than to Nazism.

Additional exploration would also be helpful of the fascist elements that motivate many of today's third world ideologies, at least while liberals remain enamored of Castro, Venezuela's Hugo Chavez, various Islamo-Nazi tyrants, and other fascists. It could ask what ties link ancestors of the current Islamic jihad militancy with Hitler's Nazis.

oldberg has provided far more than a "secret history" of the American left. This book supplies the basis for a new political paradigm freed from the old, false, Stalinist left/right political division that pits communists against fascists and Nazis. Instead, the defining political divide would be (as Reagan put it), between the maximum level of human freedom consistent with rule of law against lawlessness and tyranny, in a word: fascism.

This would eliminate many of the conflicting definitions burdening the term "fascism," which serve more to confuse than to enlighten political understanding. It would draw together the elements that throughout history have led (or, rather, misled) many people into embracing tyranny, and even totalitarianism. And, most importantly, it would make clear that our alternatives are not the cynically-limited left-wing notion of choosing from among either more or less congenial dictatorships, but rather the actual alternative we see in history: choosing between dictatorship and freedom. For instance: the French choice in 1789 for tyranny and America's 1776 choice for freedom. The 20th century provides many examples showing that the crucial choices people made were not between competing forms of tyranny but either for freedom or for slavery: in the Axis powers, on the battlefields of World War II, in Ronald Reagan's great counter-offensive against fascism in the Middle East, in Central America, in Africa, at Berlin, and in the Soviet Empire itself.

These are the choices that defined how people lived and died, that touched off great advancements of the human spirit or dragged men down into the maelstrom of war, terror, and mass destruction. Given such an understanding, we can make sense of terms like progressive and reactionary, compassion and selfishness, tolerant and narrow-minded, not to mention such old standbys as liberal and conservative, democratic and republican, and even, freedom and slavery. CPR

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First Things

Why is anyone surprised by Obama?

by John Kurzweil

The great Russian writer Alexander Solzhenitsyn once reported that, when asked why communism made its terrible descent upon their land, his countrymen's most frequent answer was: "we have forgotten about God." It confirmed George Washington's wisdom of 213 years earlier that "... reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle" — a point once considered axiomatic in America. But now, seeing the shocked surprise gripping so many people confronted with the Obama assault on everything American, I wonder how many of us recall Washington's wisdom.

The current talk of the political press, for instance, is the worldwide revolt of the masses against the wave of neo-socialism engulfing so many nations. In America, it has taken the form of rebellious crowds at Democrat town halls and hundreds of spontaneous "tea parties" from coast to coast to protest Obama's broad, power-to-the-top crash-campaign. The other day, *Wall Street Journal* contributor Dan Henninger remarked that "Karl Marx described a society's least politically engaged people as the lumpen proletariat. Well, it's beginning to look as if the globe's lumpen proletariat has decided they've had about enough of the lumpen bureaucratariat ...." Why? For one thing, Henninger argued, "... the growth in gross debt as a percentage of GDP since the dawn of the new century is stunning .... In the U.S., debt as a percentage of GDP rose to 87 percent in 2009 from 55 percent in 2000 .... In short, the lumpen electorate works, and the lumpen bureaucratariat spends." OK, but what else could the millions of good people who voted for Obama have expected? Godless people are not moral, they are thieves.

For another example, consider the virtual "cloud of unknowing" that envelopes most Americans on the implications that so heavily burden the word "environment" as currently used. People-hating leftists have captured the so-called environmental movement, and long ago banished from it any notion of actually protecting the environment if doing so might diminish popular enthusiasm for activist government. Actual environmental protection is the last thing they wants, for the same reason the left never permits or admits any progress against racism or poverty or corporate corruption. Their aim is destruction of our faith in ourselves as free men and women, so they cheer when we cannot obtain adequate water or energy or jobs, when we despair of our ability to "preserve the planet" without imposing massive state controls.

Well, what did we expect? *Christian charity* from people certain that Christianity is an enslaving artifact of an obscurantist, guilt-riddled past? Why are Christians surprised when all the predictions *of their own religion* prove true about the New Obama Man (without God): that he is a self-loathing monster aimed always toward death? Even John Lennon noticed the difference between a sincere liberal and the social misfits convinced, as David Horowitz put it about leftists, that everything human is alien:

> But if you want money for people
> with minds that hate
> All I can tell you is, brother, you'll
> have to wait.
>
> — *"Revolution," 1971*

And as another, older song put it: "so the Bible said, but it still is news." Christ said I am the vine, you are the branches, and even though no one is surprised when branches cut from their vine wither and die, men seem to think the West can be cut adrift from its religious foundation and not wither and succumb to resurgent barbarism. Were Obama not barbaric, we would have to doubt our own root Judeo-Christian beliefs. As it is, he merely confirms just how dependable the Bible is as a predictor of human behavior. CPR

John Kurzweil is CPR's *editor.*

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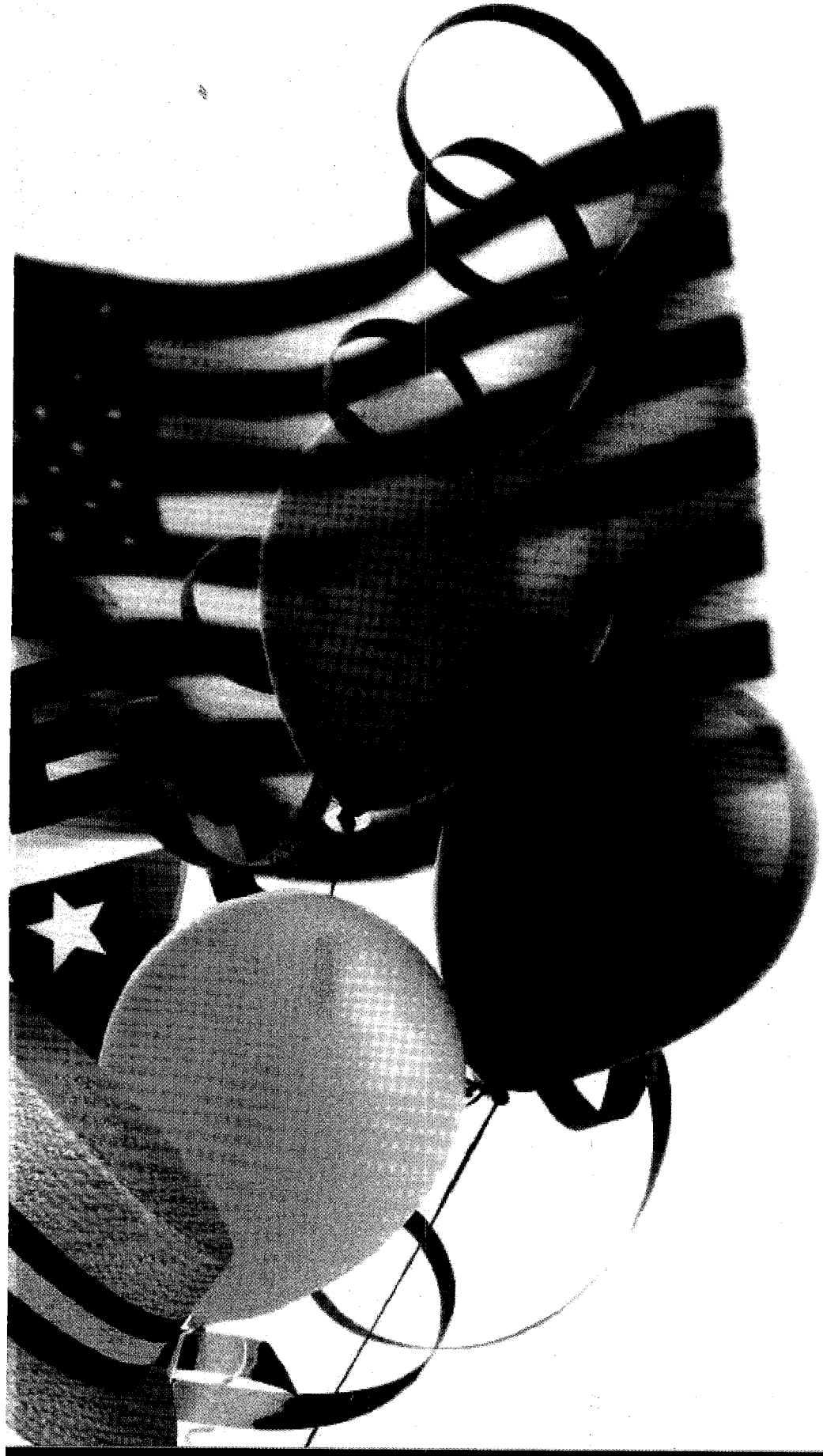

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